



THOMAS L. GARTHWAITE, M.D.
Director and Chief Medical Officer

FRED LEAF
Chief Operating Officer

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
(213) 240-8101

BOARD OF SUPERVISORS

Gloria Molina
First District

Yvonne Brathwaite Burke
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

June 5, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**EPIDEMIOLOGY AND LABORATORY SURVEILLANCE AND RESPONSE
PROJECT - ATLAS DEVELOPMENT CORPORATION MARKETING
AGREEMENT - AMENDMENT NO. 1
(All Districts) (3 Votes)**

CIO RECOMMENDATION: APPROVE ☒ APPROVE WITH MODIFICATIONS ()
DISAPPROVE ()

IT IS RECOMMENDED THAT YOUR BOARD:

Authorize and instruct the Director of Health Services, or his designee, to sign Amendment No. 1 to Agreement No. H-207543, substantially similar to Exhibit I, with Atlas Database Development Corporation (Atlas), to: (1) amend the termination provision to allow the Contractor to continue to support any sub-licenses in the event of a termination for convenience, and (2) require that a sub-license used by Contractor and a sub-licensee be approved in writing by County's Project Manager, from the date of Board approval through June 30, 2006.

PURPOSE/JUSTIFICATION OF THE RECOMMENDED ACTIONS:

In approving the recommended actions, the Board is authorizing the Director of Health Services, or his designee, to: (1) amend the termination provision to allow the Contractor to continue to support any sub-licenses in the event of a termination for convenience, and (2) require that a sub-license used by Contractor and a sub-licensee be approved in writing by County's Project Manager, from the date of Board approval through June 30, 2006.

The reporting process is now an integrated, networked system linking individual disease case reports, case investigation records, food borne illness reports, outbreaks, and laboratory information. The Visual Confidential Morbidity Report (VCMR) has successfully demonstrated its ability as a centralized data system to manage large volumes of incoming case reports with efficiency and accuracy.

The amendment is required in order to ensure that those entities wishing to use the software will have a viable source to continue to maintain the software in the event County chooses to terminate its relationship with Atlas. Also, County's Project Manager will approve each sub-license in order to ensure that the sub-license accurately describes the relationship between Atlas and the sub-licensees.

FISCAL IMPACT/FINANCING:

The fiscal impact remains unchanged in the proposed Amendment. Under the Agreement, County receives a royalty fee of ten percent (10%) of the gross monthly revenue received by Contractor. The Department will monitor these agreements through receipt of a copy of each sub-license obtained by Contractor as well as monitoring reports submitted by Contractor.

Expected income from the marketing agreement with Atlas has not yet been determined. Any income generated will be added to DHS General Fund. This agreement will not increase net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

VCMR is an advanced electronic reporting system for all communicable diseases. The main purpose of VCMR is to make disease investigation, tracking and reporting more efficient for Los Angeles County as well as the State DHS. VCMR accurately manages the investigative cycle of a disease or outbreak from initial date of onset to the final resolution of a case report. This functionality offers the strongest tool in the tracking and managing of all new and open cases of diseases.

On April 2, 2002, the Board of Supervisors approved a sole source agreement with Atlas Database Development Corporation for a software marketing agreement for the period date of Board approval through June 30, 2006.

The amendment is required in order to ensure that those entities wishing to use the software will have a viable source to continue to maintain the software in the event County chooses to terminate its relationship with Atlas. Also, County's Project Manager will approve each sub-license in order to ensure that the sub-license accurately describes the relationship between Atlas and the sub-licensees.

Attachment A provides additional information.

County Counsel has reviewed the proposed amendment with Atlas (Exhibit I) as to use and form.

CONTRACTING PROCESS:

The original agreement with Atlas was awarded on a sole source basis because Atlas is currently under agreement with the Department for development of VCMR software.

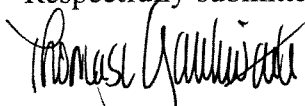
IMPACT ON CURRENT SERVICES (OR PROJECTS):

This amendment will assist in ensuring the marketability of VCMR, and thus improve the capacity of public health surveillance and response to infectious diseases throughout the County of Los Angeles and the State of California.

The Honorable Board of Supervisors
June 5, 2003
Page 3

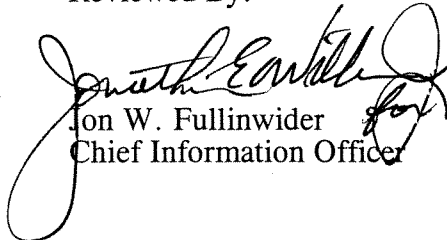
When approved, this Department requires three signed copies of the Board's action.

Respectfully submitted,



Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

Reviewed By:



Jon W. Fullinwider
Chief Information Officer

TLG:po

Attachments

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

BLETCD2384.PO

SUMMARY OF AGREEMENT
(ATLAS DEVELOPMENT CORPORATION)

1. **TYPE OF SERVICE:**

Atlas Development Corporation will assist DHS in marketing the Visual Confidential Morbidity Report software for the County throughout the State of California.

2. **AGENCY ADDRESS AND CONTACT PERSON:**

Atlas Development Corporation
6351 Owensmouth Avenue, Suite 101
Woodland Hills, California 91767
Attention: Stephen C. Atlas
Telephone: (818) 340-7080

3. **TERM:**

April 2, 2002 through June 30, 2006.

4. **FINANCIAL INFORMATION:**

Under the agreement, the County receives a royalty fee of ten percent (10%) of the gross monthly revenue received by Contractor.

Expected income generated from the marketing agreement with Atlas Database Software Corporation has not yet been determined. Any income generated will be added to the DHS General Fund.

5. **PRIMARY GEOGRAPHIC AREA TO BE SERVED:**

Currently Countywide (with expansion to Statewide areas as software is licensed).

6. **DESIGNATED ACCOUNTABLE FOR PROGRAM EVALUATION:**

James Haughton, M.D., M.P.H., Medical Director, Public Health

7. **APPROVALS:**

Public Health:	Jonathan E. Fielding, M.D., M.P.H.
Information Systems Branch:	Robert Greenless, Ph.D., Information Officer
Contracts and Grants Division:	Riley J. Austin, Acting Chief
County Counsel (review):	Christina Salseda, Deputy County Counsel

BLETCD2384.PO

CIO ANALYSIS

Atlas Database Software Corporation Software Marketing Agreement

CIO RECOMMENDATION: ☒ APPROVE ☐ APPROVE WITH MODIFICATION
☐ DISAPPROVE

Contract Type:

☐ New Contract ☒ Contract Amendment ☐ Contract Extension
☐ Sole Source Contract

New/Revised Contract Term: Base Term: # of Option Yrs

Contract Components:

☒ Software ☐ Hardware ☐ Telecommunications
☒ Professional Services

Project Executive Sponsor: James Haughton, M.D., M.P.H., Medical Director, Public Health

Budget Information :

Y-T-D Contract Expenditures	\$0
Requested Contract Amount	\$0
Aggregate Contract Amount	\$0

Project Background:

Yes	No	Question
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project legislatively mandated?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project subvented? If yes, what percentage is offset? No net County cost

Strategic Alignment:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project consistent with the currently approved Department Business Automation Plan? The Business Automation Plans do not specifically address the development or management of product marketing agreements.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles I/T Directions Document?
<input type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles I/T Standards? Not Applicable – Marketing Agreement.

Project/Contract Description:

This amendment to the marketing agreement with Atlas Database Software Corporation (Atlas) will authorize the Director of the Department of Health Services (DHS) to amend the termination for convenience provisions of the agreement to allow sub-licensees (other counties or municipalities that purchase the software) to continue to receive support from Atlas following the County's termination of the agreement.

Background:

Visual CMR is used to collect, report and track communicable disease information in Los Angeles County, except Tuberculosis, Sexually Transmitted Diseases, and AIDS cases. It is a customized application owned by Los Angeles County. The State of California has expressed an interest in replacing their reporting system with Visual CMR. If that occurs, other California counties may opt to implement the system in order to simplify reporting. Atlas has agreed to market the Visual CMR for the County in response to this interest by the State and potentially other counties. Visual CMR may become the de facto standard for communicable disease reporting in California.

Atlas has identified their first prospective sale of the software to another county.

Project Justification/Benefits:

Approval of this amendment will allow the marketing of this L.A. County system to other entities, potentially establishing this software as the statewide standard for this type of data collection and reporting. At present Atlas has its first prospective sale of the software pending with San Diego County. Approval of this amendment clears the way for that sale and it may generate, a yet to be identified amount of revenue to be deposited in the General Fund.

Project Metrics:

Not Applicable. This amendment only modifies the Termination for Convenience provisions for the Marketing agreement.

Impact If Request is Not Approved:

If the Termination for Convenience provisions are not revised, it could prevent the sale of the software to San Diego and other prospective customers.

Alternatives Considered:

County Counsel has determined this to be most appropriate course of action.

Project Risks:

None.

Risk Mitigation Measures:

None.

Financial Analysis:

There is no net County cost associated with this Agreement. There is the potential for the County to realize some revenue.

CIO Concerns:

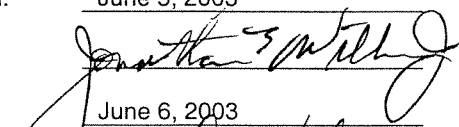
None

CIO Recommendations:

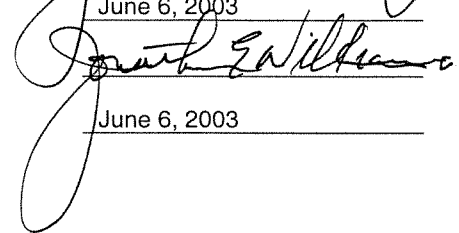
My office supports this action and recommends approval by the Board.

CIO APPROVAL

Date Received: June 5, 2003

Prepared by: 

Date: June 6, 2003

Approved: 

Date: June 6, 2003

Contract No. H-207543

VISUAL CONFIDENTIALITY MORBIDITY REPORT
SOFTWARE MARKETING AGREEMENT

AMENDMENT NO. 1

THIS AMENDMENT is made and entered into this _____ day of _____, 2003, by and between COUNTY OF LOS ANGELES (hereafter "County"), and ATLAS DATABASE SOFTWARE CORPORATION (hereafter "Contractor").

WHEREAS, on April 2, 2002, County and Contractor entered into Agreement No. H-207543 (hereafter, "Agreement"), for the provision of marketing, licensing, support and enhancement rights in County's Visual Confidentiality Morbidity Report (or Visual CMR) Software; and

WHEREAS, it is the intent of the parties hereto to amend the Agreement to make the changes described hereinafter.

NOW THEREFORE, the parties hereby agree as follows:

1. 6.0 GRANT OF LICENSE, shall be deleted in its entirety and replaced as follows:

"6.0 GRANT OF LICENSE

County hereby grants to Contractor, and Contractor hereby accepts, this license of County materials

according to the terms of Subparagraph 6.1. effective on the date all parties hereto have executed this Agreement.

6.1 CONTRACTOR RIGHTS

County grants to Contractor the following rights and no other:

- 6.1.1 For the term of this Agreement, the exclusive right to support, modify, enhance, and copy County Materials to enable Contractor to market County Materials to Sub-licensees;
- 6.1.2 For the term of this Agreement and as necessary to meet sub-license or services agreement obligations, the exclusive nontransferable right to package, demonstrate, market, and sub-license County Materials for all appropriate hardware platforms, subject to Paragraph 8.0 (Sub-license Revenue, Royalties, and Taxes). Such right includes customer trials

supervised by Contractor in furtherance of Contractor's right identified hereunder, but subject to Paragraph 7.3 (Confidentiality);

6.1.3 For the term of any sub-license or service agreement granted under this Agreement, the exclusive right to use, copy, modify, maintain and enhance County Materials in performance of obligations under such sub-license or services agreement; and

6.1.4 For the term of any sub-license or services agreement granted under this Agreement, the exclusive right to prompt notice and copies of all modifications and enhancements to County Materials made by, for, or on behalf of County.

6.2 Release of County Materials

Notwithstanding any other provision of this Agreement, Contractor may not release any County Materials whatsoever to any third party except

pursuant to, and after execution of, a County approved contract.

6.3 Contractor Sub-License

Contractor may sub-license County Materials only pursuant to an executed sub-license or services agreement in a form substantially similar to the pre-approved (1) Exhibit B-1 Software Development, Licensing, and Maintenance and Support Agreement; or (2) pre-approved Exhibit B-2 Application Services Provider Agreement; or (3) in the event Contractor desires to use a substantially different format, the licensing agreement must be approved in writing by County Project Director, whose approval shall not be unreasonably withheld (collectively, "Approved Sub-license Agreements"). The approved sub-license Agreements must prohibit: (1) any sale, lease, license, or other transfer by Sub-licensee except to its users; and (2) any distribution or other disclosure of any County Materials, or any copying thereof, to or for any persons or entities other than Sub-licensee and its users at any time. Said Sub-license or services agreement shall limit any use and/or

copying of County Materials except to the extent necessary for Sub-licensee's internal business purposes. Contractor shall provide County with a copy of each sub-license or services agreement within thirty(30)days of the execution of said Agreement.

6.4 Use of County Materials

Use of County Materials by Contractor is expressly limited to those activities which further Contractor's fulfillment of its responsibilities under this Agreement. Contractor's marketing of County Materials may also include use of consultants or subcontractors, under a written agreement (Exhibit C (Contractor/ Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement)) of confidentiality, nondisclosure, and protection of County's proprietary rights to assist Contractor in fulfilling such responsibilities."

2. 19.0, TERMINATION FOR DEFAULT OF CONTRACTOR, shall be deleted in its entirety and replaced as follows:

"19.0 TERMINATION FOR DEFAULT OF CONTRACTOR

19.1 Termination for Default

County may, subject to the provisions outlined below, by written notice of default to the Contractor, terminate the whole or any part of this Agreement if Contractor fails to fulfill its obligations hereunder in a timely manner, and in such circumstances does not take effective measures, in County's sole discretion, to cure such failure within thirty (30) calendar days after receipt of County.

19.2 Excusable Default

If, subsequent to notice pursuant to Subparagraph 19.1, County determines that Contractor was not in default, or that such default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 20.0 (Termination for Convenience of the County).

19.3 Sublicense Agreements

In the event this Agreement is terminated pursuant to Paragraph 19.1 "Termination for Default", the sublicense agreements and all benefits and fees associated with these agreements shall revert directly to the County.

19.4 Performance of Existing Agreements

Notwithstanding any provision of this Agreement to the contrary, upon receipt of a notice of termination pursuant to Paragraph 20.0 (Termination for Convenience of County) or pursuant to Paragraph 19.1 ("Termination for Default"), Contractor shall continue to perform software support and other obligations incurred under existing agreements subject to the provisions of this subparagraph, but shall not be entitled to further market or execute any sub-license or services agreement. During the period Contractor continues to perform under existing agreements

following a notice of termination,
Contractor's authority shall continue to
be based upon the license rights and
limitations described in Subparagraphs
6.1 and 6.3 above. In the case of a
termination for convenience,
Contractor's authority to continue
performing services under existing
services agreements shall continue to
the expiration or termination of all
existing agreements. In the case of a
termination for default, such authority
shall immediately cease upon
notification to Contractor from County's
Project Director that Contractor stop
providing such services."

3. Paragraph 42.0, SAFELY SURRENDERED BABY LAW, shall be
added to Agreement as follows:

"42.0. SAFELY SURRENDERED BABY LAW:

1. NOTICE TO EMPLOYEES REGARDING THE SAFELY
SURRENDERED BABY LAW: The Contractor
shall notify and provide to its
employees, and shall require each

subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. Such information and notice is set forth in Attachment F of this Amendment and is also available on the Internet at www.babysafela.org for printing purposes."

2. CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW: The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its

Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used."

4. Exhibit "B" (VISUAL CONFIDENTIALITY MORBIDITY REPORT SOFTWARE MODEL SOFTWARE LICENSE AGREEMENT) is deleted in its entirety and replaced with Exhibits "B-1" and "B-2", attached hereto and incorporated into this Agreement.

5. Except for the changes set forth hereinabove, Agreement shall not be changed in any other respect by this Amendment.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed, on its

//

//

//

//

//

//

//

behalf, by its Director of Health Services, the day, month, and
year first above written.

COUNTY OF LOS ANGELES

By _____
Thomas L. Garthwaite
Director and Chief Medical Officer

ATLAS DATABASE SOFTWARE CORPORATION
DBA ATLAS DEVELOPMENT CORPORATION
Contractor

By _____
Signature

Printed Name

Title _____
(AFFIX CORPORATE SEAL)

APPROVED AS TO FORM BY THE
OFFICE OF THE COUNTY COUNSEL
LLOYD W. PELLMAN

By _____
Christina A. Salseda
Deputy County Counsel

APPROVED AS TO CONTRACT
ADMINISTRATION:
Department of Health Services

By _____
Riley J. Austin, Acting Chief
Contracts and Grants Division

AGREECD2385F.PO

**SOFTWARE DEVELOPMENT, LICENSING, AND MAINTENANCE AND
SUPPORT AGREEMENT**

THIS AGREEMENT dated _____ by and between ATLAS Database Software Corporation d/b/a Atlas Development Corp., a corporation duly organized and existing under the laws of the state of California with its principal office at 6351 Owensmouth Ave., Suite 101, Woodland Hills, CA. 91367 ("**ATLAS**"), and _____ a [_____] duly organized and existing under the laws of the State of California with its principal offices located at _____ ("**CLIENT**").

Whereas, the parties desire to provide for a software system license to CLIENT for use of the software described more fully in the attached Exhibit "A" (the "**Atlas Software**"); and

Whereas, CLIENT desires to license the Caché database software (the "**Caché Software**") from ATLAS as the value added reseller of InterSystems Corporation (the "**Caché Software**" and the "**Atlas Software**" is sometimes collectively referred to in this Agreement as the "**Software**"); and

Whereas, CLIENT desires to engage ATLAS to maintain and support the Software;

Now, therefore, the parties intending to be legally bound, hereby agree as follows:

Part I - Software License

1.1. **License.** Subject to the terms and conditions specified including (without limitation) the payment of applicable license fees as set forth in the attached **Schedule 1.1** this Agreement grants to CLIENT a non-transferable, non-exclusive license and right to use the Software solely for Approved Purposes for a term equal to the term of this Agreement.

1.2 Installation.

(a) Subject to the terms and conditions of this Agreement, ATLAS shall install the necessary Atlas Software and the Caché Software on Servers supplied by CLIENT, at the CLIENT locations set forth in the attached **Schedule 1.2** (the "**Locations**"). Installation may occur either remotely or in person, at the reasonable discretion of ATLAS.

(b) At this time the parties contemplate that each Location shall host one (1) Server. CLIENT may increase the number of Servers at a Location and/or the number of Locations where Servers are located at any time by providing ATLAS thirty (30) days prior written notice of its desire to install additional copies of the Software accompanied by the appropriate license fees. Once appropriate license fees have been paid, a Server may be relocated within the Territory at the request of CLIENT. CLIENT shall be responsible for paying all costs associated with such relocation, including the cost of any ATLAS support services required to facilitate the relocation. In the event that such relocation requires any modification to the Software, in order to ensure its proper operation, to comply with any relevant law or regulation, or for any other reason, CLIENT shall bear the expenses of such modification.

(c) One (1) copy of the CMR Workstation software, and the appropriate Caché Software may be installed on each workstation operating Visual CMR at an Authorized User site (collectively "**Licensed Workstations**").

(d) Subject to payment of all applicable fees, unique user ID's shall be issued to each user accessing the Web CMR software over the World Wide Web.

(e) All requests by CLIENT for installation of workstation software, or the issuance of user ID's, shall be made to Atlas in writing according to the form set forth as Exhibit "B".

1.3 **Use of Software.** CLIENT and its Authorized Users shall use the Software solely for Approved Purposes. CLIENT will not provide or disclose the Software to, use for the benefit of, or otherwise make the Software or any part thereof available to, any other party. CLIENT shall not copy (except to transfer to a hard disk or other permanent storage device within a Server or Licensed WorkStation) or permit to exist additional copies of the Software provided under this Agreement, except for the following:

(a) CLIENT may maintain backup copies of the Software for each Authorized User site and as reasonably necessary for archival, backup, testing, training, development and other similar purposes at no additional cost to CLIENT ("**Backup Copies**").

(b) Upon payment of all applicable license fees, CLIENT may install a copy of the CMR Workstation software at each workstation at any Authorized User site. All Authorized Users shall be subject to the obligations of confidentiality and limitations on use of the Software set forth in this Agreement. CLIENT shall be responsible for ensuring that each individual user at an Authorized User site

is informed of CLIENT's obligations under this Agreement. CLIENT shall, on a monthly basis, inform ATLAS of the number of Licensed Workstations by submitting an updated list that will include the following information: site name, address, date of activation and number of user identification numbers, and shall pay the applicable licensing fee for new Licensed Workstations.

Any governmental, accrediting, or regulatory body lawfully requesting or requiring access to the Software also may have access to the Software subject to compliance with all applicable laws, rules and regulations, and subject to the provisions of **Section 4.2**.

(c) For purposes of auditing the payment of licensing fees hereunder, the parties agree that ATLAS may develop a counting protocol that will verify the number (but not the identity) of all Authorized Users and Authorized User Sites.

1.4 **Prohibited Uses.** Except as otherwise provided in this Agreement, CLIENT may not: (i) reverse engineer, disassemble, de-compile, create or derive works from the Software for the purpose of resale or use by CLIENT, any division, affiliate, parent or subsidiary of CLIENT, the clients of CLIENT, or any other person or entity; (ii) merge the Software into another software product; (iii) translate the Software into another language format; (iv) operate the Software at any time on hardware other than on the hardware specified for such license; (v) operate the Software at any time at any location other than a Location or any Authorized User site; (vi) make the Software available to anyone other than Authorized Users; (vii) copy the Software except to make Backup Copies, to transfer the Software to a hard disk drive or other permanent storage device (following which CLIENT shall eradicate the other copy) or to backup Authorized Users' data; (viii) other than pursuant to this Agreement license, sublicense, sell, publish, rent, lease, or lend the Software; (ix) remove, alter, or obstruct copyright notices, trademarks or other legends on the Software, or its packaging, documentation or related materials; (x) transfer the Software in violation of this Agreement or applicable laws. Notwithstanding the foregoing, nothing in this Agreement shall prevent CLIENT from using its own know-how and knowledge concerning the laboratory industry to independently develop software routines that perform tasks similar to those performed by the Software, so long as such development is accomplished without reverse engineering or de-compiling the Software, or creating or deriving such routines from the Software.

1.5 **Disaster Recovery.** The Software may be used at an alternative location in the event that a bona fide disaster makes operation of the Software impossible by CLIENT or any Authorized User site, provided, however, that the Software will not be used at the backup location any longer than necessary to obtain a replacement location or Authorized User site authorized by ATLAS, or to otherwise remedy the situation. At such time as the backup location is no longer necessary, CLIENT will ensure that all vestiges of the Software are removed from the backup location.

1.6 **License and Use Fees.** CLIENT shall pay Software license and use fees set forth in the attached **Schedule 1.1**.

Part II - Modifications

2.1 Development Responsibilities

ATLAS is responsible for implementing the Modifications (if any) to the Atlas Software described in the attached **Schedule 2.1** (the "**Modifications**"). Within thirty (30) days of the Effective Date the parties shall agree upon an Implementation

Workplan (as that term is defined in subsection (b) of this Section) for the Modifications.

(a) For purposes of this Agreement, except as the context otherwise requires, the term "Atlas Software" shall include the Modifications.

(b) ATLAS may be responsible for further modifying the Atlas Software as agreed by the parties from time to time. ("**Custom Development**"). Prior to the commencement of each Custom Development project, the parties shall agree upon a scope of work and detailed description of the Custom Development and a schedule for development, delivery, and acceptance for the Custom Development (the "**Implementation Workplan**") and the fees (if any) to be charged.

(c) CLIENT is responsible for providing ATLAS with all business rules (including the regulatory environment of CLIENT's business) relevant to its ongoing use of the Software, the development of the Modifications and any further Custom Development. CLIENT shall be responsible for the accuracy of all such information.

(d) Any changes requested by CLIENT or deemed necessary by Atlas to support and maintain the Atlas Software shall be handled as Custom Development and shall, upon delivery, become part of the Atlas Software.

2.2 Access to CLIENT's Premises; Use of CLIENT Assets

(a) ATLAS may reasonably require periodic access to CLIENT's offices during the course of a Custom Development project. CLIENT agrees to provide such access, subject to terms and conditions of this Agreement, provided that such access shall not be disruptive to CLIENT's operations.

(b) Any visits to CLIENT's premises shall be at mutually agreeable times, upon reasonable advance notice, provided, however, that the parties shall establish a mutually agreeable procedure for emergency access to the premises, should such access be required.

(c) CLIENT shall provide all CLIENT assets reasonably necessary for ATLAS to fulfill its obligations arising out of this Agreement. CLIENT shall retain all right title and interest in and to the CLIENT Assets, and (unless otherwise agreed by the parties) no interest in same shall pass to ATLAS other than the right to use the Assets for the purpose of fulfilling any obligation arising out of this Agreement. Unless provided herein, CLIENT shall remain responsible for maintenance and repair of the CLIENT Assets, including without limitation, maintaining appropriate and prudent back-up of all data and information. CLIENT shall remain responsible for the loss or damage of all Assets located at its premises, unless such loss or damage is caused by the negligence, gross negligence or willful misconduct of ATLAS, in which case ATLAS shall be liable for such loss or damage.

2.3 Testing and Acceptance

(a) The Implementation Workplan may specify a time period and a procedure for testing the Modifications or any other Custom Development (a "Test Plan") Unless otherwise specified in the Implementation Workplan, CLIENT shall have primary responsibility for, and ATLAS shall assist CLIENT in, conducting the testing to verify and confirm that the Software performs in accordance with the Documentation and the Specifications. Documentation means all user, operator, system administration, technical, support and other manuals and all other written, printed, electronic or other

format documentation or materials published by ATLAS and provided to CLIENT by ATLAS or otherwise made available to CLIENT by or through ATLAS that describes or is otherwise related to the functional and operational capabilities of the Software.

(b) During the applicable testing period, CLIENT shall inform ATLAS of all Critical and High Defects that it identifies and ATLAS shall correct such Defects.

(c) Not later than thirty (30) calendar days after the completion of the Test Plan or, if no Test Plan is specified, not later than thirty (30) calendar days after delivery of all deliverables under any development project, CLIENT shall submit to ATLAS a written notice that the deliverables comply in all material respects with the Specifications ("**Project Acceptance**"). If CLIENT withholds such notice of Project Acceptance it must deliver to ATLAS within the same thirty-day period a written notice detailing any material non-conformity of the development with the Specifications. ATLAS shall thereafter have thirty (30) calendar days within which to evaluate such claim and to respond. If ATLAS agrees with CLIENT's claim, it shall take prompt action to correct such non-conformity. If ATLAS disagrees with such claim, the parties shall make all good faith efforts to resolve the dispute.

(d) If timely notice as described in subsection 2.3 (c) is not received, Project Acceptance will be deemed to have been delivered.

(e) Upon receipt of the notice of Project Acceptance, the Warranties described in **Section 4** of this Agreement shall commence.

2.4 **Change Order Procedure.** If either party believes that a change in the development project (whether in time frames, costs or deliverables) is necessary or desirable, such party shall submit a written change request to the other (a "**Change Request**"). In the event of a CLIENT-initiated Change Request, within ten (10) business days of Atlas' receipt of such Change Request, Atlas shall provide to CLIENT a written statement describing: (a) the impact on Software performance, if any, and the modifications to the Software that will be required as a result of the Change Request; (b) the effect of the Change Request on the Implementation Workplan; and (c) an estimate of the cost associated with the Change Request (collectively, the "**Change Response**"). If Atlas submits a Change Request to CLIENT, such Change Request shall include the information required for a Change Response. CLIENT shall either accept or reject any such Change Response or Atlas-initiated Change Request within ten (10) business days of CLIENT's receipt thereof. If CLIENT accepts a Change Response or an Atlas-initiated Change Request in writing, such Change Response, together with CLIENT's Change Request, or such Atlas-initiated Change Request, shall be deemed to be a "**Change Order**" and shall become part of this Agreement. If CLIENT rejects Atlas' Change Response or Atlas-initiated Change Request, Atlas shall proceed to fulfill its obligations under this Agreement without change. Payment terms for fees associated with any Change Order shall be payable upon delivery.

Part III - Software Maintenance and Support

3.1 **General.** ATLAS offers a program of maintenance and support services for the Software (the "**Maintenance and Support Program**"). The terms are described more fully in this **Part III** and in the attached **Schedules 1.1 and 3.1.**

3.2 **Types of Support.** Upon Project Acceptance, ATLAS will provide support for the Software for an additional fee. ATLAS will act as a second line of support, primarily dealing with CLIENT's own support staff.

3.3 **Support Fees; Hours.** Support fees are set forth in the attached **Schedule 3.1**. Unless otherwise agreed to by the parties, support is available only during normal business hours, weekdays 7:00 a.m. - 6:00 p.m. Pacific time (excluding holidays).

3.4 **Maintenance.** ATLAS shall provide maintenance to CLIENT in return for the monthly maintenance fees set forth in the attached **Schedule 1.1**. Payment of such fees shall commence at the conclusion of the Warranty Period.

(a) **Correction of Defects.** For so long as CLIENT continues to pay monthly maintenance fees, Atlas shall maintain the Software so that it functions without Defects in accordance with the Specifications, and will correct any such Defects in accordance with the procedures set forth in **Schedule 3.1**. All efforts associated with the identification and resolution of such Defects shall be considered maintenance.

(b) **Maintenance Releases.** For so long as CLIENT continues to pay monthly maintenance fees, ATLAS shall provide to CLIENT all maintenance releases of the Software and the Documentation.

(c) **Enhancements and Modifications.** ATLAS will provide all enhancements and modifications to the Atlas Software that CLIENT reasonably believes are necessary for the CLIENT to comply with all applicable governmental regulations, including the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, *provided, however,* that the CLIENT must provide ATLAS with timely notice to ensure ATLAS can deliver such enhancements or modifications of the Atlas Software within the time required for CLIENT to comply.

3.5 **Performance of Support Services and Maintenance Services.** At ATLAS's election, maintenance and support services may be performed at CLIENT's premises or via modem communication to CLIENT's server. Except for an emergency or otherwise at the request of CLIENT, all services performed at CLIENT's premises or at an Authorized User Site or Server Location shall be performed during CLIENT's or the Authorized User's normal business hours. CLIENT agrees to provide access to its system via a telephone line and a modem with a minimum baud rate of 56 Kbps for such purpose; provided, however, that CLIENT shall have the right to disconnect such modem at any time for any reason. CLIENT acknowledges that disconnection of its modem may adversely affect the Defect resolution time frames set forth in **Schedule 3.1**.

Part IV - General Provisions

4.1 Personnel

(a) **ATLAS Implementation Personnel.** During the term of this Agreement, the parties shall provide sufficient and qualified personnel to perform their obligations under this Agreement.

(b) **Replacement of Project Personnel.** Either party shall have the right to require the other to replace any individual working under this Agreement whom the other party reasonably deems unfit or otherwise unsatisfactory to perform the party's obligations hereunder. Notwithstanding the foregoing, before any such replacement, the parties shall meet and attempt to come to a mutually acceptable corrective plan to correct any problems with such individual. Race, gender, national origin and other similar discriminatory

characteristics shall not constitute valid grounds for any such request by either party.

4.2 Confidentiality.

(a) **General.** Each party shall, (and shall ensure that each party to whom such party is permitted to disclose the Confidential Information (defined below) of the other party shall) hold the Confidential Information of the other party secret, and shall exercise the same degree of care to protect and preserve the confidential nature and secrecy of such Confidential Information that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care. Neither party shall without the other party's prior written consent:

(i) directly or indirectly disclose, copy, distribute, republish or otherwise communicate to any third party, or allow any third party to have access to all or any of the other party's Confidential Information except as permitted by this Agreement;

(ii) permit unauthorized persons to have access to the places where the other party's Confidential Information is reproduced or stored; or

(iii) make, or assist any person to make, any use of the other party's Confidential Information not authorized by this Agreement, and shall use its best efforts to ensure that any employee or other person who acquires the other party's Confidential Information shall not make any unauthorized use thereof.

(b) **Permitted Disclosures.** The receiving party may disclose Confidential Information (except for patient records and data, which may only be disclosed with prior written consent of CLIENT):

(i) to an Approved Contractor

(ii) to its employees and in the case of CLIENT, to Authorized Users on a "need to know" basis for Approved Purposes;

(iii) to its legal counsel or other professional advisors in relation to its rights under this Agreement; and

(iv) if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of this Agreement.

(c) **Cooperation; Employee/Agent Obligations.** The receiving party shall:

(i) take all reasonable steps required by the other party to enforce any obligation of confidence imposed or required to be imposed by this Agreement; and

(ii) use its best efforts to ensure that employees, agents, contractors, and other persons under the control or direction of the receiving party will be under and will comply with obligations substantially similar to the confidentiality obligations imposed on such party under this Section.

(d) **Notification Obligation.** If the receiving party becomes aware of any unauthorized use or disclosure of the Confidential Information of the disclosing party, the receiving party shall promptly and fully notify the disclosing party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the receiving party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar legal process) to disclose any of the

Confidential Information of the disclosing party, the receiving party shall not disclose the Confidential Information without providing the disclosing party at least seven (7) days prior written notice (or such shorter period of time if seven (7) days is not available pursuant to such legal process) of any such request or requirement so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If less than seven (7) days is provided, the parties shall cooperate to seek at least seven (7) days. If the receiving party is required to make a disclosure of Confidential Information without providing such prior notice, such receiving party (if permitted by law) shall provide the other party with twenty-four (24) hours' written notice after such disclosure. Notwithstanding the foregoing, the receiving party shall exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with the disclosing party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information in such legal process.

(e) Confidentiality of Patient Records. Notwithstanding anything contained herein to the contrary, the parties agree to comply with all federal and state statutes, rules and regulations, whether now existing or hereinafter enacted, relating to the confidentiality of patient records and data.

(f) Security Policies and Procedures. ATLAS shall comply with all reasonable security policies and procedures established by CLIENT that have been provided to ATLAS, which policies and procedures may be modified by CLIENT from time-to-time upon reasonable notice to ATLAS. In the event of any such modification, ATLAS will use its best efforts to comply with the client security policies, however if ATLAS determines that it cannot comply with any policy or procedure of CLIENT, ATLAS will give client written notice of its inability to comply with the requested security policy. If a resolution to the ATLAS inability to comply with the requested security policy cannot be mutually agreed upon, both parties may agree to terminate the agreement as outlined in Section 4.4. Without limiting the generality of the foregoing, whenever any employee of either party with access to Confidential Information of the other party ceases to be employed by such party, the other party shall exercise its best efforts to ensure that such employee no longer has access to any such Confidential Information including, without limitation, by changing any applicable network passwords or similar personal security codes.

(g) Survival; No Limitation of Liability. The terms of this Section shall survive the expiration or termination of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms of any limitation of liability set forth in this Agreement shall not apply to any breach by a party of its confidentiality obligations under this Section.

(h) Definitions

Confidential Information means, any material, data or information disclosed by either party ("**Disclosing Party**") to the other party ("**Receiving Party**") including, without limitation: (a) all materials, know how, processes, trade secrets, manuals, confidential reports, financial and operational information and other matters relating to the operation of a party's business; (b) all information and materials relating to third-party vendors of CLIENT that have provided to CLIENT any part of CLIENT's information technology infrastructure; and (c) any other information that the parties mutually in writing agree shall be kept confidential, (d) any document clearly marked as confidential. Confidential Information specifically excludes any information that is: (e) publicly available or later

becomes available other than through a breach of this Agreement; (f) known to the Receiving Party or its employees, agents or representatives prior to such disclosure, or is independently developed (as shown by objectively verifiable means documenting such independence) by the Receiving Party or its employees, agents or representatives subsequent to such disclosure; or (g) subsequently lawfully obtained by the Receiving Party or its employees, agents, or representatives from a third party without obligations of confidentiality to either party. The Receiving Party shall exercise the same degree of care and protection with respect to the Disclosing Party's Confidential Information that it exercises with respect to its own Confidential Information, but in no event less than a reasonable degree of care, and shall not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of the Disclosing Party. Notwithstanding the foregoing: (h) the parties may disclose Confidential Information to employees and other persons who have a need to know; (i) either party may disclose Confidential Information if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of this Section. For purposes of this Agreement, the term Confidential Information shall also include all information related to patients of providers using the services of CLIENT.

4.3 **Warranties and Liability**

(a) General. ATLAS represents and warrants to CLIENT that the Atlas Software as modified shall function without Material Defect in accordance with the Specifications for a period of thirty (30) calendar days following Project Acceptance (the "**Warranty Period**") and thereafter during any period for which CLIENT continues to receive software maintenance.

(b) Disabling Code Covenant. Atlas represents and covenants to CLIENT that the Atlas Software does not contain any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Atlas Software to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively, a "**Disabling Code**") including, without limitation, any limitations that are triggered by: (a) the Atlas Software being used or copied a certain number of times, or after the lapse of a certain period of time; (b) the Atlas Software being installed on or moved to a central processing unit, Server, Licensed Workstation or system that has a serial number, model number or other identification different from that on which the Atlas Software originally was installed; or (c) the occurrence or lapse of any similar triggering factor or event. In the event a Disabling Code is identified, Atlas shall take all steps necessary, at no additional cost to CLIENT, to: (i) restore and/or reconstruct any and all data and/or programming lost by CLIENT as a result of such Disabling Code; (ii) furnish to CLIENT a new copy of the Atlas Software without the presence of Disabling Codes; and (iii) install and implement such new copy of the Atlas Software. CLIENT acknowledges that the Atlas Software may contain an enabling mechanism that requires the use of an electronic key provided by Atlas to enable the Atlas Software to operate on each Licensed Workstation upon which the Atlas Software is installed. At no additional cost to CLIENT, Atlas shall provide any such electronic keys to CLIENT upon demand during the hours of support availability under Schedule 3.1 hereof.

(c) Services Warranty. Atlas represents and warrants to CLIENT that it shall perform the services and provide the deliverables required by this Agreement in accordance with industry practices and standards generally applicable to such services.

(d) Exclusions. In no event shall ATLAS bear any responsibility for any Defects caused by or resulting from defects in equipment, data input errors, changes to the Atlas Software made by anyone other than ATLAS, or combinations of the Atlas Software with software not provided by or recommended by ATLAS. Any modifications to the Atlas Software made by anyone other than ATLAS shall relieve ATLAS of any and all obligations under this Section with respect to such modified portions of the Atlas Software and, to the extent such modification causes a failure of the Atlas Software to operate as warranted, any code with which it interacts.

(e) Intellectual Property Warranty. ATLAS represents that a CLIENT's use of the Atlas Software does not and shall not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any third party, and there is currently no actual or threatened suit against ATLAS by any third party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement. CLIENT warrants and represents that it possesses the requisite rights through its licensing agreements (including without limitation copyright, trade secret, patent and other intellectual property rights) in and to any data, information, hardware, software and other materials it provides for Atlas's use.

(f) Warranty of Authority. Each party represents and warrants to the other that it has the right to enter into this Agreement. ATLAS further represents and warrants that there are no outstanding assignments, grants, licenses, encumbrances, obligations or agreements (whether written, oral or implied) that are inconsistent with this Agreement and the rights granted or transferred herein. This warranty shall survive the expiration or termination of this Agreement.

(g) Indemnities.

(i) General. Each party shall indemnify, defend and hold the other party and its directors, officers, shareholders, employees, representatives, agents, attorneys, successors and assigns (collectively, "Indemnified Parties") harmless from and against any and all claims, liabilities, obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) arising out of any breach by a party of the confidentiality obligations set forth in Section 4.2. Nothing contained in this Section, however, shall bar a claim for contributory negligence.

(ii) Proprietary Rights Infringement Indemnification. Atlas shall indemnify, defend and hold CLIENT and its Indemnified Parties harmless from and against any claim asserted or any claim, suit or proceeding brought against CLIENT alleging that the Atlas Software or CLIENT's use of the Atlas Software constitutes a misappropriation or infringement upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any third party. Atlas shall defend against, and hold CLIENT and its Indemnified Parties harmless from, any such claims and pay all litigation costs (including the costs of any appellate bonds), all reasonable attorneys' fees, settlement payments and any and all damages awarded or resulting from any such claim; provided, however, that after receiving notice thereof, CLIENT promptly shall advise Atlas of any such claim, suit or proceeding. If the Atlas Software or any part thereof is held to infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any third party, and CLIENT's use of such Atlas Software, or any part thereof, is enjoined or interfered with in any manner, at its option and sole expense, within thirty (30) calendar days of such injunction or interference, Atlas shall either: (a) procure for CLIENT the right to continue using such Atlas Software free of any liability for infringement or violation; (b) replace or modify such Atlas Software with a non-infringing

system or product of equivalent or better functionality that is reasonably satisfactory to CLIENT; or (c) in the event Atlas is unable, after exercising its best efforts to implement one of the options set forth in subsection (a) or (b) above, accept return of the Atlas Software at Atlas' sole cost and expense and refund to CLIENT an amount equal to the amounts paid by CLIENT to Atlas for the Atlas Software depreciated over the following term and in the following amounts (commencing upon Project Acceptance):

Year(s)	% epreciation	% Refund
1	0%	100%
2	12.5%	87.5%
3	37.5%	62.5%
4	62.5%	37.5%
5	87.5%	12.5%
6	100%	0%

(j) Warranty Disclaimer. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR COVENANTS, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY DISCLAIMED.

(k) Limitation of Liability.

(i) Limitation Upon Types of Recoverable Damages. NEITHER PARTY HERETO SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF THE ACTION (BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(ii) Cap on Damages. ATLAS'S AGGREGATE LIABILITY TO CLIENT FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE), SHALL NOT EXCEED THE AGGREGATE SUM OF ALL FEES PAID BY CLIENT HEREUNDER.

(iii) Exclusions from Limitations of Liability. Notwithstanding anything contained herein to the contrary, the limitations of liability contained in this Section shall not apply to: (a) damages arising out of or relating to a party's failure to comply with its confidentiality obligations; (b) either party's indemnification obligations under this Section; and (c) personal injury, including death, and damage to tangible property caused by the gross negligence or willful misconduct of a party or its employees, agents or subcontractors.

4.4 Term and Termination

(a) Term. This Agreement commences on the Effective Date and will remain in full force and effect (unless

earlier terminated for cause) for a period of five (5) years (the "Initial Term"). It thereafter shall be automatically renewed for successive two (2) year periods ("Extended Term") unless either party shall give notice not later than ninety (90) days prior to the end of the Initial Term or any Extended Term of its intention not to renew. The Initial Term and the Extended Term are referred to at times collectively as the "Term".

(b) Events of Default. ATLAS and CLIENT agree that the following shall constitute events of default under this Agreement ("Events of Default") and that the occurrence of one (1) or more of such Events of Default shall constitute a material breach of this Agreement that shall allow a party, as applicable, to seek the rights and remedies available to it under this Section:

(i) Failure by ATLAS to achieve Project Acceptance on any Custom Development project if the same is not cured within sixty (60) days of receipt of written notice of such failure.

(ii) A material breach by ATLAS of its obligations under this Agreement, provided that such breach, if curable, is not cured within sixty (60) days following ATLAS's receipt of written notice of such breach;

(iii) A material breach by ATLAS of any warranty set forth in this Agreement, provided that such breach is not cured within the time frames, if any, set forth in this Agreement or, if no time frame is specified and the breach is curable, within sixty (60) days following ATLAS's receipt of written notice of such breach;

(iv) A material breach by a party of the confidentiality obligations, or software use restrictions set forth in this Agreement provided that such party has failed to cure such breach within sixty (60) days following receipt of written notice of such breach;

(v) Failure by CLIENT to pay when due any amount owed to ATLAS under this Agreement, provided that such failure is not cured by CLIENT within thirty (30) days following receipt of written notice of such failure. Notwithstanding the foregoing, if CLIENT is more than thirty (30) days late in paying any amount due more than three (3) times during any twelve-month period during the term hereof it shall constitute an Event of Default;

(vi) Failure of a party to perform any other material obligation under this Agreement provided that such failure is not cured within sixty (60) days following receipt of written notice of such failure;

(c) Rights and Remedies of ATLAS Upon Default of CLIENT. Upon the occurrence of an Event of Default by or with respect to the CLIENT, ATLAS shall be entitled to:

(i) discontinue performance of its obligation under the affected Sections of any affected Implementation Workplan; and/or

(ii) discontinue performance of its obligation under the Maintenance and Support Program; and/or

(iii) seek to recover damages from CLIENT; and/or

(iv) terminate the affected Software license if the Event of Default relates to CLIENT's uncured material breach of (i) its confidentiality obligations under this Agreement; (ii) any Software license terms (including, without limitation, any restrictions and limitations on use of the Software); or (iii) any Software license fee payment obligations.

(d) Rights and Remedies of CLIENT Upon Default of ATLAS. Upon the occurrence of an Event of Default with respect to ATLAS, CLIENT shall be entitled to any of the following remedies:

(i) terminate, in whole or in part, any affected Implementation Workplan and/or any Part or all of this Agreement and/or;

(ii) seek to recover damages from ATLAS; and/or;

(iii) discontinue services under the Maintenance and Support Program and receive a refund of any prepaid but unearned fees, which refund shall be paid by ATLAS to CLIENT within thirty (30) calendar days following ATLAS' receipt of CLIENT's notice of such discontinuation.

(e) Disputed Charges. If an invoiced amount is disputed in good faith by CLIENT then, until resolution of the dispute occurs pursuant to the provisions of Section 4.20, CLIENT shall have the right to suspend disputed payments and toll the running of time for default by: (a) paying the undisputed amount, if any; and (b) sending a written statement of exceptions to Atlas. ATLAS shall have the right to suspend any obligation reasonably related to the suspended payments and toll any default attributable to such suspension of performance during the duration of the dispute resolution.

(f) Monthly Licenses. In the event that CLIENT fails to pay required monthly license fees, such non-payment shall constitute an Event of Default subject to the remedies provided in subsection (c) of this Section. Upon termination of this Agreement, for whatever reason, all Monthly Software Licenses shall terminate.

(g) Effect of Termination. In the event that CLIENT shall terminate this Agreement for any reason, Atlas shall discontinue its services immediately; and CLIENT shall be obligated to pay to ATLAS the cost of any services provided by ATLAS, calculated at the appropriate rate, as of the date of Atlas's receipt of CLIENT's written notice of termination and any accrued but unpaid Software license fees. In the event that CLIENT shall terminate prior to fulfilling any commitment hereunder to purchase a minimum number of licenses. ATLAS shall, at its option have the right to (a) accelerate CLIENT's obligation to purchase up to the minimum number agreed upon, or (b) recalculate the license fees due and payable for all licenses purchased prior to such termination by CLIENT and charge the difference between the discounted license fees charged CLIENT to date and the full fees for such licenses as set forth in the attached Schedule 1.1. In the event of a termination by ATLAS upon CLIENT's Default under subsection 4.4 (c), the license shall terminate and CLIENT shall return all copies of the Atlas Software and any copies of user manuals and other Atlas Software documentation.

4.5 Right to Modify Services and/or Fees. Atlas may modify the services it provides and/or the fees it charges under this Agreement once annually commencing upon the twelve (12) month anniversary of the effective by providing CLIENT at least ninety (90) calendar days written notice of such modification. Upon receiving notice of any such modification or fee increase, CLIENT shall have ninety (90) calendar days in which to terminate this Agreement or any part hereof) without prejudice or charge by notifying Atlas of its intent to cancel under this Section. If Atlas receives no such notification, the modified services and/or fees shall become effective as announced.

4.6 Fees; Payment. The License Fees and related payment terms are set forth in Schedules 1.1 and 3.1 of this Agreement. The development fees and related payment terms for the Modifications are set forth in the Schedule 2.1. Unless otherwise agreed, all invoices are payable within

thirty (30) days following receipt. Late payments will be subject to interest at the rate of one and one-half percent (1 ½ %) per month until fully paid. CLIENT must provide ATLAS within fourteen (14) days after receipt of any invoice with notice of any dispute concerning the invoice (the "Disputed Charge"). Upon reasonable request of ATLAS, any such dispute will be submitted in writing. Client shall not be required to pay interest on any reasonable and documented Disputed Charge(s) until the dispute is resolved; provided, however, that if any or all of such Disputed Charge is determined against Client, Client agrees to pay interest on the amount finally due and owing, which interest shall accrue from the date that the original payment was due to vendor. In the absence of timely notice of any such dispute, CLIENT shall be deemed to have accepted the invoice and waived any further right to dispute the invoice.

4.7 Expenses. In addition to all fees paid for licenses, maintenance and support and Custom Development, ATLAS shall be entitled to reimbursement for the following categories of expenses incurred in connection with the performance of its obligations under this agreement:

(a) The cost of transportation, lodging and meals for all visits to CLIENT or any other Authorized User Site, if incurred with the prior approval of CLIENT.

(b) Any other reasonable and necessary expense incurred with the prior approval of CLIENT.

4.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective parents, subsidiaries, successors and permitted assigns.

4.9 Ownership of Tools, etc. CLIENT shall not own, and shall have no rights in or to, any tools, utilities, devices or other materials supplied and used by ATLAS in the performance of obligations hereunder which are not otherwise identified as the property of CLIENT in the Agreement. CLIENT agrees, upon the earlier of the completion of any Custom Development or the termination of the Agreement, that CLIENT shall return to ATLAS any such tools, utilities, devices and other materials, and destroy any copies thereof.

4.10 Independent Contractors; Non-solicitation; Taxes. In the performance of this Agreement, each party is an independent contractor. Neither party nor their respective employees are, or shall be, deemed for any purpose to be, employees of the other party. Both parties warrant and represent that they will not independently deal with those employees or contract representatives of the other party who have direct contact with the implementation of this Agreement, and will not directly solicit such individuals, either as an employee or independent contractor. This provision shall remain in full force and effect for the term of this Agreement and for the one (1) year following termination or expiration thereof. CLIENT shall be responsible for all sales, use and other taxes levied or assessed on the transactions contemplated under this Agreement, except for those taxes assessed on ATLAS's income.

4.11 Excusable Delays. Neither party shall be liable for any loss or damage suffered by the other as a result of any delay in performance of this Agreement if such delay is a result of causes beyond the party's reasonable control, including but not limited to, acts of terrorism, Acts of God, civil disturbances, labor disturbances or shortages, acts of war, terrorist acts, or any act, delay, or failure to act of any federal, state or local authority or of any shipper, supplier or manufacturer. The time of the performance shall be extended by a period equal to the time lost by reason of such delay.

4.12 Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or

U.S. mail return receipt requested or a reputable overnight courier, costs of delivery prepaid, to the parties at their respective addresses set forth below or to such other addresses or person as a party shall have designated in writing in accordance with this provision.

To ATLAS: Atlas Development Corporation

6351 Owensmouth Ave., Suite 101,

Woodland Hills, CA. 91367

Attn: President

To: CLIENT:

4.13 Definitions. Unless otherwise defined in this Section, all capitalized terms shall have the definitions assigned to them in this Agreement or any schedule or exhibit:

Approved Contractor means third party contractor engaged by one party that has been approved in writing by the other party.

Approved Purposes means the sole purpose of carrying out the business of CLIENT, which business contemplates and includes communicable disease tracking, investigation and case management.

Authorized User means, collectively: (a) CLIENT, and its employees; (b) physicians reporting communicable disease incidents to CLIENT and all nurses, technicians and other clinicians associated with such physicians; (d) third party consultants, contractors and auditors performing services for CLIENT, provided that such third parties shall be required to maintain the confidentiality of Atlas' Confidential Information; and (e) any governmental, accrediting or regulatory body lawfully requesting or requiring access to the Software.

Authorized User Site means a location other than a Server Location that is owned or controlled by CLIENT, or any of its customers at which site use of the Software occurs by means of a Licensed Workstation.

Caché Software means the Caché database software licensed to CLIENT by ATLAS as value added reseller for InterSystems Corporation.

Change Order means a change in development or implementation that differs from the specifications as agreed upon and signed off by the parties.

Client means any entity or person contracting with CLIENT for laboratory services.

CLIENT Assets means all hardware, software, data, information, materials, supplies, furniture, equipment, physical plant and other assets provided to or made available to Atlas by CLIENT for use in performing any obligation arising out of this Agreement.

Critical Defect means any Defect that renders the Atlas Software completely inoperative due to a failure to operate in accordance with the applicable Specifications.

Days shall mean normal working business days, and shall exclude any legal holiday.

Defect Analysis means a fax, e-mail or telephone call from ATLAS acknowledging that an incident Report has been received, details on what ATLAS has learned about the Defect as of the time of communication, that appropriate technical personnel have been assigned to work on the Defect and ATLAS' initial analysis of and action plan for resolving the reported Defect.

Defect means any failure of the Atlas Software to operate in accordance with the Specifications.

Final Resolution means ATLAS provides a correction or modification of the Atlas Software that corrects the Defect or the resolves the Support Issue.

High Defect means a Defect that significantly impacts CLIENT's ability to use the Atlas Software because of operational, functional or informational deficiencies that arise from or are related to the Atlas Software's failure to operate in accordance with the applicable Specifications.

Interim Resolution means ATLAS: (a) reinitiates or restarts, as applicable, the Software, if the reported Defect caused the Atlas Software to be inoperative; (b) enables CLIENT to access the Atlas Software, if the reported Defect caused CLIENT to be unable to access the Atlas Software; or (c) provides CLIENT with an acceptable workaround that solves or mitigates a reported Defect, which workaround can be provided with minimal CLIENT inconvenience.

Low Defect means any Defect that is not a Critical, High or Medium Defect.

Material Defect means a Critical Defect or a High Defect.

Medium Defect means any Defect that adversely affects the Atlas Software such that the Atlas Software is prevented from operating in accordance with the applicable Specifications but for which an CLIENT Interim Resolution may be accomplished.

Response means a fax, e-mail or telephone call from ATLAS to CLIENT acknowledging that a Defect has been reported.

Server means a computer system running the CMR Communications Server software.

Specifications means the written description of the functionality of the Atlas Software.

Support Issue means any Problem that is not a Defect.

Territory means the County over which CLIENT has jurisdiction within the State of California.

4.14 Entire Agreement. Each party hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms, and further agrees that it is the complete and exclusive agreement, oral or written of the parties and supersedes all other oral or written proposals, agreements and communications between the parties relating to the subject matter of this Agreement. Each party further acknowledges that any change or modification of this

Agreement shall not be valid unless it is in writing signed by both parties.

4.15 Choice of Law; Forum Selection. This Agreement shall be deemed to have been made, executed and delivered in the State of California and the terms and conditions of this Agreement shall be construed in accordance with the laws of such state, notwithstanding any choice-of-law rules to the contrary. Any action brought by either party to enforce this Agreement shall be brought in a federal or state court located in the County of Los Angeles, State of California having jurisdiction over the matter.

4.16 Paragraph Headings. The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

4.17 Indulgences, Etc. Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any other occurrence.

4.18 Severability. Any determination that any provision (or portion thereof) of this Agreement is invalid, illegal or unenforceable shall not affect or impair the enforceability of any other provision (or portion thereof).

4.19 Attorneys Fees. The prevailing party in any dispute hereunder shall be entitled to recover from the other party for all costs and expenses, including reasonable attorneys fees, incurred in any action taken to enforce compliance with this Agreement, including the collection of fees hereunder. This provision shall survive any termination or assignment of this Agreement.

4.20 Dispute Resolution

(a) **General.** Subject to subsection (b) of this Section, if a dispute arises between the parties in connection with this Agreement, the parties shall undertake in good faith to use all reasonable efforts to as promptly as possible (which efforts shall not be required to extend beyond thirty (30) calendar days) settle the dispute by negotiation or non-binding mediation (but not arbitration) without first resorting to litigation (except where urgent injunctive relief is sought).

(b) **Equitable Relief.** Each of the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such relief in a court of competent jurisdiction.

4.21 Effective Date. The Effective Date of this Agreement is the date first set forth above.

4.22 Consent. Where either party's consent is required prior to the action of the party, such consent shall not be unreasonably withheld or delayed.

WHEREFORE, the parties, by their duly authorized representatives, have hereunto set their respective hands and seals as of the date first set forth above.

ATLAS Development Corporation

CLIENT

By:

Title:

By:

Title:

Schedule 1.1
Pricing

Exhibit “A”

To Be Supplied

Exhibit "B"

CMR Client Activation Request

Ordered by / Bill to:

Contact:

Address:

Phone:

Fax:

The following fields are required for processing:

**Item Requested (*Server,
Workstation, Web User ID*):**

Site/User Name:

Site Number:

Organization:

Contact:

Address:

Phone:

Fax:

Tentative Date of Activation:

Note: A Caché license with maintenance is required for each Thick Client Server and Workstation.

I hereby authorize Atlas Development Corporation to proceed as outlined in this Activation Request. I understand that when this Activation Request is signed both by me and the duly authorized representative of Atlas it shall become part of the existing agreement between Client and Atlas and shall be governed by the terms and conditions of that agreement.

Client Authorization Signature:

Date:

For Office Use Only:

Date request made with InterSystems:

Date Key received:

Invoice Number / Date:

Key ID Assigned:

User ID Assigned:

Schedule 2.1
Software Modifications
TO BE SUPPLIED

Schedule 3.1
Support Program
Terms and Conditions

I. Hours of Operation

Telephone hotline support is available to all customers during normal business hours are weekdays, 7:00 a.m - 6:00 p.m. Pacific time (excluding holidays). Support calls from clients not contracting for a Monthly Support Block, or Extended Coverage are handled in the order received.

II. Support Levels

1. Standard Support

- 1.1 Support commitment only during normal business hours.
- 1.2 Standard Support pricing outlined below.
- 1.3 Monthly Support Blocks can be purchased at a discount over the Standard Rate.
- 1.4 Standard Support customers opting for Monthly Support Blocks are given first priority.

2. Extended Coverage Support

- 2.1 Support outside of normal business hours.
- 2.2 On-call pager, dedicated support and other extended services available.
- 2.3 Tailored to meet the client's needs.
- 2.4 Contact us for service and pricing to meet your requirements.

III. Monthly Support Blocks

Support is available as needed for an hourly fee. Customers may choose to purchase support hours in advance, at a discounted rate. Atlas is committed to provide the number of support hours specified in the contract block you purchase. A block of hours represents a commitment to provide support during a specified calendar month. (a "Monthly Support Block").

Monthly Support Blocks are a cost-effective means of ensuring that support is available when needed. We suggest choosing a Monthly Support Block that is consistent with the anticipated level of Atlas support required. Overage hours are provided based on available personnel and staffing. Clients with monthly support block hours are given first priority.

Purchases of Monthly Support Blocks are automatically renewed each month. A customer may cancel this commitment, or change the number of hours in its Monthly Support Block at any time on thirty (30) days prior written notice. Notice of such cancellation or change must be received not later than the first day of the month to be effective for the succeeding month. A customer may not change the number of hours in

its Block more than four (4) times in any twelve-month period.

IV. Standard Support Pricing - As of 1/1/2002

Support is charged at \$ /hour (the "Standard Support Rate") unless a Monthly Support Block is purchased.

# Hours	Cost for Block	Overage Rate
120	\$	\$
100	\$	\$
80	\$	\$
60	\$	\$
40	\$	\$
30	\$	\$
20	\$	\$
10	\$	\$

V. Billing

Timesheets are provided upon request with each month's invoice with hours exceeding the Monthly Support Block, and are charged at the specified Hourly Rate for Overage. This overage is payable with the Monthly Support Block fee for the succeeding month. Unused hours in a Monthly Support Block will not be credited to succeeding months. Invoices are payable upon receipt. Late payments shall be subject to interest at the rate of one and one-half percent (1 ½ %) per month until fully paid.

Procedures

I. Definitions

All capitalized terms shall have the meaning assigned to them in the Contract by and between the parties to which this **Schedule 3.1** is appended.

II. Support Personnel

Support calls are first handled by a customer support specialist who is responsible for “triaging” issues as they are received. Each issue is logged at intake into Atlas’s Incident Tracking Log and assigned an incident number for the client’s future reference. Response, Defect Analysis, Interim and Final Resolution are documented using this log to ensure continuity throughout the process and to provide future reference for others encountering similar issues.

If the customer support specialist determines that the incident is not an engineering “Problem” (e.g. customer is unfamiliar with the operation of the software, the software documentation is incorrect or incomplete, or the incident is unrelated to the software, such as a hardware problem) then he/she assumes responsibility for the incident until Final Resolution. If it is characterized as a “Problem” properly handled by an engineer, it is referred to a support engineer.

III. Escalation Procedures for Support Issues.

The following table and accompanying text summarize Atlas Medical Software’s response commitment to all clients contracting for support coverage.

Table I: Support Escalation Procedures

Defect Category	Response	Defect Analysis	Interim Resolution	Final Resolution
Critical	Immediate if during help desk hours; †thirty (30) minutes if after help desk hours	Two (2) hours following the Response	Four (4) hours following the Response	Within two (2) calendar days following Interim Resolution
High	One (1) business day	Two (2) business days following the Response	Three (3) business days following the Response	Within ten (10) business days following Interim Resolution
Medium	Two (2) business days	Five (5) business days following the Response	Ten (10) business days following the Response	Next Release
Low	Three (3) business days	Ten (10) business days following the Response	Thirty (30) business days following the Response	Next Release

† Assumes CLIENT has contracted for extended support coverage

Critical Defects. With respect to Critical Defects, following receipt of notice thereof, Atlas shall provide: (a) an immediate Response if notice is received during regular telephone help desk hours, and a Response within thirty (30) minutes if notice is received after regular telephone help desk hours; (b) a Defect Analysis within two (2) hours of the Response; (c) an Interim Resolution within four (4) hours of the Response (which may include the provision of a temporary workaround); and (d) a Final Resolution within two (2) calendar days after implementation of the Interim Resolution. Atlas personnel shall continuously attempt to resolve such Critical Defect until an Interim Resolution is reached.

High Defects. With respect to High Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within one (1) business day; (b) a Defect Analysis within two (2) business days of the Response; (c) an Interim Resolution within three (3) business days of the Response (which may include the provision of a temporary workaround); and (d) a Final Resolution within ten (10) business days after implementation of the Interim Resolution.

Medium Defects. With respect to Medium Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within two (2) business days; (b) a Defect Analysis within five (5) business days of the Response; (c) an Interim Resolution within ten (10) business days of the Response; and (d) a Final Resolution in the next release of the Software.

Low Defects. With respect to Low Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within three (3) business days; (b) a Defect Analysis within ten (10) business days of the Response; (c) an Interim Resolution within thirty (30) business days of the Response; and (d) a Final Resolution in the next release of the Software.

**APPLICATION SERVICES PROVIDER
AGREEMENT
BY AND BETWEEN
ATLAS DEVELOPMENT CORPORATION
AND**

This Agreement is made as of ("Effective Date") between Atlas Development Corporation, a California corporation with its principal place of business at 6351 Owensmouth Avenue, Suite 101, Los Angeles, CA. 91367-2330 ("ADC") and , a with its principal place of business at ("COUNTY").

1. Certain Definitions.

Unless otherwise defined in the body of this Agreement, all capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.

- 1.1 "Approved Purposes" means the sole purpose of carrying out the business of COUNTY, which business contemplates and includes communicable disease tracking, investigation and case management.
- 1.2 "Authorized Users" means laboratory technicians, physicians, registered nurses and other employees, contractors and personnel (including COUNTY, medical office or clinic support personnel) authorized by COUNTY to access the Software.
- 1.3 "Authorized Client Site" means any physician's office, clinic or other remote site (other than any other laboratory) that COUNTY has authorized to access the Software subject to the registration procedures established by the parties and the continuing payment of all appropriate fees and charges as detailed elsewhere in this Agreement and the attached exhibits.
- 1.4 "Client" means any physician's office, clinic or other remote site that uses COUNTY to process medical laboratory tests.
- 1.5 "Data Center" means the ADC contracted facilities where the Network is co-located.
- 1.6 "COUNTY Site" means the site of COUNTY's operations at [address]
- 1.7 "Software" means the software system more fully described in the attached Exhibit "A".
- 1.8 "Network" means the network of Servers and related hardware and software housed at the Data Center that supports the web links and protocols through which Authorized Users and the COUNTY Site access the Software.

2. Rights and Authorizations.

- 2.1 **Grant of Rights.** Subject to the payment of all applicable fees and costs (as set forth in the attached Exhibit "D") and all other terms and conditions of this Agreement, ADC grants to COUNTY a non-exclusive, non-transferable, right during the term of this Agreement to access and use, and to permit Authorized Users to access and use the Software solely for Approved Purposes. COUNTY hereby

acknowledges ADC's proprietary rights in and to the system as more fully set forth in Section 11.1. COUNTY shall limit Authorized Users to those health care professionals providing treatment and related services at Client Sites located within San Diego County in the State of California.

- 2.2 **COUNTY Authorization.** COUNTY authorizes ADC to electronically store, retrieve, handle, process and transmit all data received from COUNTY and any and all Authorized Users of the Software system, as COUNTY's authorized agent for all remote order entry and reporting of laboratory tests and results that are handled by the Software during the Term of this Agreement. Without limiting the generality of the foregoing, COUNTY grants to ADC all required and necessary permissions and authorizations to ensure that ADC may fully carry out its obligations under this Agreement, and COUNTY agrees to fully cooperate in providing any further documentation, including the execution of written applications, permissions, authorizations, certifications or other documents, whether they may be required as of the Effective Date or may become necessary at any time thereafter. COUNTY warrants and represents that it has all requisite power and authority under its management contracts with ProMedica to grant such rights.

3. Implementation and Further Updates to Functionality and Performance.

- 3.1 **Assistance and Coordination.** COUNTY will (i) at its expense install and maintain any (a) computer hardware at, and/or (b) any telecommunications connection(s) from, the COUNTY Site to the Data Center (including one or more dedicated leased lines, if needed), if in either case the same are deemed necessary by Atlas to facilitate the mutually agreed levels of electronic data interchange performance and provide information with respect thereto reasonably necessary to enable ADC to use such connection(s); and (ii) provide such other items and assistance as may be reasonably necessary to enable ADC to implement the Network and the Software, as set forth in the SOW Statement of Work ("SOW"). If, no less than thirty (30) days after the Effective Date, such telecommunications

connection has not been installed, or if ADC is unable to obtain the specified assistance from COUNTY, and ADC has used its diligent, good faith efforts to cooperate in all material respects with COUNTY, ADC will have the right to terminate this Agreement without penalty. In the event that Atlas shall not terminate the Agreement, the Delivery Date shall be extended by one (1) day for each day the computer equipment and/or telecommunications connection(s) referred to are not installed, and shall otherwise be extended to account for delays resulting from COUNTY's failure to provide the access or assistance referred to in Section 3.1, or, upon mutual written agreement, to account for other delays in the implementation process and changes in the SOW that may be agreed to by the parties. ADC's decision not to terminate shall not be deemed a waiver of its right to terminate the Agreement at any subsequent time should COUNTY's failure to meet its obligations continue.

- 3.2 **Implementation.** Immediately upon the execution of this Agreement, the parties shall schedule a meeting to discuss the implementation plan for the Network and the Software. ADC has agreed as part of this process, that it will devote two (2) days of consulting to aid COUNTY in determining the appropriate scope of the implementation, including any product enhancements that may be necessary. As soon as practicable after this consulting is completed, ADC and COUNTY will agree upon the scope of the implementation, the additional work to be performed over and above ADC's standard implementation and the additional costs if any of such additional work. This understanding shall be incorporated into the SOW to be attached as Exhibit "B" to this Agreement. When the SOW is attached it will become part of this Agreement and ADC will implement the Network and the Software in accordance in all material respects with the specifications set forth in the SOW. Implementation is understood to mean ADC's providing COUNTY what ADC reasonably and in good faith believes to be a fully functional version of the Network and the Software (the "Alpha Version") that (i) operates in accordance in all material respects with the specifications in the SOW and (ii) is ready to be acceptance tested as set forth in Section 3.3 below. COUNTY approval of such testing procedures (and in turn acceptance) shall not be unreasonably withheld.

3.3 Testing and Acceptance.

- 3.3.1 The parties shall mutually agree upon a test plan to be implemented by COUNTY on or before the date Atlas delivers the Alpha Version of the Software for acceptance testing (the "Delivery Date"). Acceptance of the system will be deemed to have occurred at the end of fifteen (15) days after the Delivery Date, unless prior thereto notice of rejection is communicated by COUNTY to ADC in writing. COUNTY may reject the Software only if it fails in some material respect to meet the specifications in the SOW. If

COUNTY properly rejects the Software, ADC will correct or remedy such nonconformity as soon as reasonably possible but in no event in more than thirty days (30) days after receipt of notice of rejection. When it has made the necessary corrections, ADC will again deliver the Software to COUNTY and the acceptance provisions above shall be reapplied until the Software is accepted. In the event that ADC has not cured a material failure to meet the specifications of the SOW after the later to occur of (i) the expiration of the time allotted for implementation as set forth in the Implementation Schedule agreed to by the parties and set forth in the SOW, or (ii) the third or any subsequent rejection, COUNTY's sole and exclusive remedy shall be to terminate this Agreement and receive a full refund of any license fees paid, with no further payment obligations thereafter to ADC. In no event shall COUNTY unreasonably withhold acceptance.

- 3.3.2 The acceptance processes set forth within this Section 3.3 will also govern the acceptance procedure for implementation of special features set forth in Section 8.3. Notwithstanding anything to the contrary in this Section 3.3, ADC shall not be deemed to be in breach of Sections 3.2, or 3.3 if its failure to perform any obligation provided for herein or therein is a result of COUNTY's failure to perform any of its other obligations under this Agreement in any material respect or of any matter beyond ADC's reasonable control as specified in Section 13.1.

- 3.3.3 Use of the Software and the Network for the processing of live data for Clients prior to the delivery of acceptance will be undertaken only with COUNTY's permission and will be undertaken only if COUNTY has established appropriate safeguards (including the back-up of data and the provision of back-up systems for such Clients to process their data) to ensure that the Clients are able to continue to function without disruption of their clinical and business practices. **ANY USE OF THE SOFTWARE AND THE NETWORK DURING THIS "BETA PERIOD" SHALL BE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

- 3.4 **Service Level Agreement.** ADC will operate the Network from and after the acceptance date in all material respects in accordance with the Service Level Agreement set forth as Exhibit "C".

3.5 **Further Development Obligations.** After acceptance of the Software, ADC shall have no obligation to perform further development or customization work except as set forth in this Section 3 or Section 10. Any modifications or updates will be made at the rates for custom development set forth in Exhibit "D", subject to this Section 3, Section 10 and COUNTY's right (if any) to receive such modifications or updates free of charge as otherwise set forth in this Agreement.

3.6 **Upgrades.** ADC agrees to offer and provide to COUNTY any updates and upgrades to the Software and related upgrades to the Network that ADC creates, licenses or acquires and makes available generally to its comparable customers using the Network and the Software. As long as COUNTY shall continue to pay all applicable fees and related costs, all such updates and upgrades shall be free of charge unless ADC makes such updates or upgrades generally available to comparable ADC customers using the Atlas Web Network and the Software at an additional price. If implementation of such updates or upgrades can be made on COUNTY's behalf only following special configuration work by ADC because of customized configurations previously adopted by COUNTY, the parties shall agree upon appropriate Custom Development Fees pursuant to the procedure set forth in Section 3.7 and in Exhibit "D".

3.7 **Project Management and Change Methodology.** The parties will use the following project management methodology in performing any development under this Agreement, whether for any changes to the specifications for the initial implementation as described the SOW or for any additional projects following acceptance:

- (i) Project definition - COUNTY will supply a written description of the proposed project or change order and its purpose;
- (ii) Cost analysis - within fifteen (15) days following receipt of the project definition document ADC will use its reasonable commercial efforts to provide COUNTY a detailed written list of all projected project fees, costs and expenses, together with an initial description of the necessary engineering specifications and development schedule to achieve the project or to enact the change order;
- (iii) COUNTY may then elect to proceed with the project for the price, specifications and schedule agreed upon by the parties;
- (iv) Gap analysis - if at any time the parties determine that the specifications require amendment, they shall mutually agree upon specific changes required, along with the additional fees and adjustments to the project schedule (if any) that may be required as a result of such changes;
- (v) Upon completion of a project (excluding changes to the initial implementation, which is addressed in

Sections 3.2 and 3.3 above), the parties shall conduct acceptance testing and verification for the project in accordance with the written specifications agreed upon by the parties or in accordance with the procedures of Section 3.3 above;

- (vi) Only upon acceptance pursuant to Section 3 will ADC implement the results of the project in the Network.

Nothing in this Section 3.7 will be deemed to require ADC to accept or undertake any project or development effort that it is not required by another provision of this Agreement.

3.8 **New Functionality.** ADC reserves the right to integrate any new functionality, modifications or reliability or performance improvements into the Network or the Software without prior approval of COUNTY, so long as such modifications do not adversely affect COUNTY's use of the system in a material manner.

3.9 **Delays.** Any delays that are the result of any action, inaction or omission of COUNTY or its Clients may result in changes to the terms of ADC's performance of its obligations including (without limitation) changes to the delivery schedule, the scope of services to be performed and/or the cost of such services.

3.10 **Relocation.** At any time during the Term, COUNTY may relocate the Software to its own hardware and network, subject to the payment of any fees for ADC's services in facilitating the relocation at ADC's then prevailing rates. ADC's responsibility for hardware and other support of the Network will cease and ADC will continue to maintain and support the Software for the remainder of the Term as provided in this Agreement.

4. Access.

4.1 **URL's.** If COUNTY wishes to use its existing web presence as an access portal for the Network, or the Software, COUNTY will assign one or more Universal Resource Locators (URL) for this purpose, which ADC will implement according to the project implementation schedule.

4.2 **Access to Equipment.** Except as otherwise provided in this Section 4.2 or in Section 10.5 or Section 13.1 (regarding matters beyond its reasonable control), ADC is responsible for all equipment, servers, software and communications within its Data Center. ADC is not responsible for (i) any Client System; (ii) the transmission to the Data Center of order and results information by and Laboratory or other Authorized User; (iv) COUNTY's or any Authorized User's access to the Network, or any data supplied by COUNTY or any Authorized User; or (v) any equipment needed by COUNTY or any Client to access the Internet. In the event access to the Network requires that a Client install additional communications connections, ADC shall not be responsible for the costs associated with such connections. To the

extent that installing or providing of such access results in ADC incurring additional time, cost, or expense, ADC and COUNTY will agree upon fees due for such implementation.

5. **Reports.** ADC shall maintain for review by COUNTY upon reasonable advance notice, server logs detailing access to the system and the data.
6. **Technical Support.** ADC shall provide COUNTY with technical support for the Network and the Software as set forth in Exhibit "E".
7. **Compliance.**

7.1 COUNTY shall be responsible for promptly informing Atlas of all other rules and regulations promulgated by any federal, state or local governmental agency, national or local accrediting organization (or other similar entity regulating COUNTY's business) affecting COUNTY's use of the Network and the Software system by its Authorized Users. ADC shall make any modifications to the Network and the Software system in response to any such regulatory issues of which it is informed. ADC shall make any modifications and enhancements to the Software required by changes in COUNTY's regulatory obligations at COUNTY's expense and, to the extent such changes require the addition or modification of software, hardware or services (of any third party) ADC shall make its best efforts to aid COUNTY in securing the same, also at COUNTY's expense. All services performed under this subsection shall be performed at the Custom Development Rate referenced in Exhibit "D".

8. Payments

- 8.1 **Fees.** During the initial and any renewal Term of this Agreement COUNTY shall pay ADC the fees set forth in Exhibit "D" and "E".
- 8.2 **Custom Development Fees.** If ADC provides any special features in accordance with the procedures set forth in Section 3.7, COUNTY shall pay Custom Development fees as mutually agreed by the parties.
- 8.3 **Payment.** Except as otherwise stated herein, all payments due ADC hereunder shall be made within fifteen (15) days of the date of ADC's invoice. COUNTY shall pay ADC for all sales, use and other taxes and similar charges based on or arising from this Agreement or its performance, other than taxes based on ADC's net income, that ADC invoices COUNTY. Any such taxes will be listed separately on each invoice. Late payments for any amounts due hereunder will bear interest at one and a half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.
- 8.4 **Expenses.** In addition to the fees set forth in Exhibit "D", COUNTY shall reimburse ADC for reasonable expenses incurred by ADC in the performance of services for COUNTY, including (without limitation) travel outside of the Los

Angeles, California area, together with meals and lodging if such travel is previously authorized in writing by COUNTY; long distance telephone charges (voice or data connection); magnetic storage media; and postage, courier and other delivery services. ADC shall invoice COUNTY for these expenses and COUNTY shall pay ADC within fifteen (15) days of the date of ADC's invoice.

- 8.5 **Disputed Amounts.** If COUNTY in good faith disputes any portion of an ADC invoice, COUNTY will timely pay ADC all undisputed amounts. Within thirty (30) days of invoice date for an invoice on which a disputed amount appears, COUNTY will: (i) notify ADC in writing of the specific items in dispute; (ii) will describe in detail COUNTY's reason for disputing each such item; and (iii) in the event that the disputed amount (or the aggregate of amounts previously disputed by COUNTY) exceeds ten thousand (\$10,000) dollars, will deposit such disputed amount into an escrow account. Within fifteen (15) days of ADC's receipt of such notice, the parties will negotiate in good faith to reach settlement on any items that are the subject of such dispute. If COUNTY does not notify ADC of any items in dispute within such thirty (30) day period, COUNTY will be deemed to have approved and accepted such invoice, except to the extent that an audit as described in Section 9.1 reveals inaccuracies in any invoice not reasonably discernible through commercially reasonable scrutiny in the course of COUNTY's payment processing system.

- 8.6 ADC reserves the right to modify the Fees set forth in Exhibits "D" and "E" once per year on the anniversary of the Effective Date of this Agreement.

9. Record Keeping.

- 9.1 **Record Keeping.** ADC agrees that it will maintain its books and records relating to the fees and other costs and expenses paid by COUNTY under this Agreement for three (3) years after they have been paid, and will, upon reasonable cause and notice, permit such books and records to be examined, at COUNTY's expense, by its authorized representatives. ADC shall also make such books and records available, as and when required, to any authorized representative of any governmental agency pursuant a valid court order or comparable administrative request directing such disclosure.

10. Warranties And Disclaimers.

- 10.1 **Authorization.** Each of ADC and COUNTY warrants to the other that it has the right to enter into this Agreement and perform its obligations hereunder.
- 10.2 **Performance Warranty.** ADC warrants that the Software will function and perform in all material respects in accordance with the specifications contained in the attached Exhibit "A" and any SOW, as the same may be amended and updated by mutual agreement of the parties. If COUNTY notifies ADC of a breach of the foregoing

warranty, or if ADC otherwise becomes aware of a breach of the foregoing warranty, ADC shall investigate and correct such failure at no cost to COUNTY. ADC will perform all support services consistent with its obligations under the Support Program described in Exhibit "E".

- 10.3 **Harmful Code.** ADC represents and warrants to COUNTY that, as of the delivery Date, to the best of its knowledge, the Software does not contain computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with any use of either party's computer and communications facilities or equipment ("Harmful Code") and it has used commercially reasonable efforts to prevent the introduction of such "Harmful Code" to the services prior to delivery to or use by COUNTY. For the purposes of this warranty, "Harmful Code" shall include, without limitation, any code containing viruses, Trojan horses, worms, or like destructive code or code that self-replicates. To the extent there is a breach of this Section 10.4 ADC shall investigate and correct the problem specified at no cost to COUNTY.
- 10.4 **Exemptions.** COUNTY acknowledges and agrees that ADC shall not be responsible for Network or the Software unavailability due to (i) outages caused by the failure of public telecommunications network or the negligent, grossly negligent or willful actions of any third party, or (ii) errors in coding in, or any other aspect of the electronic files containing information supplied by COUNTY or any Authorized User, (iii) unauthorized use or misuse by users of the Network; or (iv) COUNTY's failure to provide access as required under this Agreement or (iv) any other matter beyond ADC's reasonable control. During the Term of this Agreement, every quarter, COUNTY shall provide ADC with a six (6) month rolling forecast of the total transaction volumes on the Network ("Forecast"). If the actual transaction volume is twenty percent (20%) greater than the Forecast, then ADC shall not be responsible for failure to meet the service level specifications in Exhibit "C", *provided however*, that ADC shall use its commercially reasonable efforts to meet such availability requirements. In the event that such efforts require an increase in hardware, software, or service levels at the Data Center, ADC shall be allowed to modify the fees set forth in this Agreement in order to defray such increased cost.
- 10.5 **Disclaimer.** EXCEPT AS PROVIDED ABOVE, ALL INFORMATION, TECHNOLOGY AND SERVICES PROVIDED BY ADC HEREUNDER ARE PROVIDED "AS IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ADC EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO SUCH INFORMATION, TECHNOLOGY AND SERVICES.

- 10.6 **Third-Party Disclaimer.** ADC expressly disclaims any warranty, express or implied, relating to any third-party hardware, software or services utilized by (or relied upon by) Atlas in performing the services hereunder.

11. Proprietary Rights.

- 11.1 **Ownership.** COUNTY acknowledges that, as between the parties, ADC (on its behalf and as authorized representative for the County of Los Angeles, Department of Health Services) owns all right, title, and interest in and to all components of the Network, the Software, and any interfaces, now or hereafter existing, including all improvements and derivatives thereof and modifications thereto.
- 11.2 **Use Restrictions.** Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall give COUNTY any right or license to use, reproduce, display or distribute (electronically or otherwise) any technology or intellectual property rights in the Software. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall give ADC any right or license of any kind to use any trademarks, logos, service marks or trade names of COUNTY, or any data supplied by a COUNTY or its Authorized Users.
- 11.3 **Ingredient Branding.** ADC reserves the right to display copyright, trademark graphic, and other branding elements on the graphical user interface of the Software.
- 11.4 **Trademark License.** Subject to the terms and conditions set forth in the Agreement and solely for the purposes hereof, COUNTY grants ADC a non-transferable, non-exclusive license, without right of sublicense, to place the COUNTY trademarks, trade names, service marks and logos ("Marks") on the graphical user interface for the Software as directed by COUNTY. In no event may ADC alter or remove any Marks unless such alteration or removal is approved in advance in writing by COUNTY. Except for the right to use the Marks as set forth in this Section 11.4, nothing contained in this Agreement shall be construed to grant ADC any right, title or interest in or to the Marks. ADC acknowledges COUNTY's exclusive ownership of the Marks. ADC agrees not to take any action inconsistent with such ownership and further agrees to take, at COUNTY's reasonable expense, any action that COUNTY reasonably requests to establish and preserve COUNTY's exclusive rights in and to its Marks. ADC shall not adopt, use or attempt to register any trademarks or trade names that are confusingly similar to the Marks or in such a way as to create combination marks with the Marks.
- 11.5 **ADC Indemnity.** Except as provided in Section 11.6, ADC shall indemnify, defend and hold COUNTY harmless from and against any and all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by COUNTY on account of such third party's claim of infringement or misappropriation resulting from use by Authorized

Users of the Software or the Network of any U.S. patent, copyright, trademark or trade secret or other proprietary right; provided however that COUNTY shall give ADC prompt notice in writing of such suit or proceeding, ADC shall have complete control of the settlement and defense thereof, and COUNTY shall provide any information and assistance reasonably requested by ADC (at ADC's expense). Notwithstanding the foregoing, ADC shall not settle or compromise any claim hereunder in a manner that does not unconditionally release COUNTY from liability or that adversely affects the provision of services hereunder without first obtaining COUNTY's prior written consent. The foregoing obligation does not apply with respect to the Software or portions or components thereof or services (i) not supplied by ADC (e.g. third party software, services, telecommunications or technology); or (ii) that are combined with other products, processes or materials not supplied by ADC where the alleged infringement relates to such combination. ADC shall also not have any obligation with respect to further damages arising from COUNTY's continued use of infringing intellectual property after ADC has provided and implemented modifications to the Software or the Network, as applicable, that do not continue to infringe upon or misappropriate the third party's claimed rights and that meet in all material respects the requirements of the SOW, as amended, and ADC has notified COUNTY in writing that the purpose of the modification is to avoid further infringement or misappropriation. In the event such a claim by a third party causes COUNTY's quiet enjoyment and use of the Software to be seriously endangered or disrupted, or if either party reasonably believes that such is likely, ADC will, at its option, do one of the following: (a) replace the Software, without additional charge, with a compatible, functionally equivalent and non-infringing system; (b) modify the Software to avoid the infringement; (c) obtain a license to continue use of the Software for the term of this Agreement and pay any additional fees required for such a license; or (d) if none of the foregoing alternatives are practical, indemnify COUNTY as set forth above and terminate this Agreement for convenience.

- 11.6 **COUNTY Indemnity.** COUNTY shall indemnify, defend and hold ADC harmless from and against any and all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by ADC on account of any third party's claim of whatever nature resulting from use or display of any information received from County or any Authorized User(excluding the interface developed by ADC hereunder) including (without limitation) any claimed violation of any privacy right or privilege, or any U.S. patent, trade secret, trademark, or copyright or other proprietary right; provided however that ADC shall give COUNTY prompt notice in writing of such suit or proceeding, COUNTY shall have complete control of the settlement and defense thereof, and ADC shall provide any information and assistance reasonably requested by COUNTY (at COUNTY's expense). Notwithstanding the foregoing, COUNTY shall not settle or compromise any claim hereunder in a

manner that does not unconditionally release ADC from liability without first obtaining ADC's prior written consent.

12. Term and Termination of Agreement.

- 12.1 **Term.** Unless terminated earlier as provided herein, this Agreement shall begin on the Effective Date and continue for an initial period of five (5) years from the Effective Date. Thereafter, this Agreement shall automatically renew for two (2) years unless either party gives notice of its intent not to renew no later than six (6) months prior to the end of the initial term. The initial term, together with all renewals thereof shall constitute the "Term".
- 12.2 **Termination for Cause.** Either party may terminate this Agreement upon ninety (90) days written notice in the event the other party breaches any material term of this Agreement and such breach continues without cure for the duration of the notice period.
- 12.3 **Survival.** Sections 1, 4 (during the transition period described in Section 12.4), 5 (during the transition period), 6 (during the transition period), 7 (during the transition period), 8 (except that Sections 8.2 and 8.3 shall survive only during the transition period), 9.1 (during the transition period), 10, 11 (during the transition period), 12, 13, 14, 16 and 18 will survive any termination or expiration of this Agreement. Any payment obligations that exist as of the termination or expiration of this Agreement shall remain in effect.
- 12.4 **Post-Termination Obligations.** In the event of termination of this Agreement, ADC will work with suppliers identified by COUNTY to structure a smooth changeover from ADC to any other supplier of services. Without limiting the foregoing, ADC will provide a secure one-time FTP feed of COUNTY's existing user database in a comma-delimited form, and the delivery of all magnetic storage media containing any and all laboratory orders, reports and other patient information, and the destruction of any paper copies of the same. ADC will assist in cutover from the Network as requested, including establishing a pointer from its main site to the new sites indicated by COUNTY for a period of ninety (90) days following transition from the Network. The obligations of ADC under this Section 12.4 are subject to the timely payment by COUNTY of all accrued fees and expenses under this Agreement, including, without limitation, the fees and expenses due ADC pursuant to this Section 12.4. Notwithstanding the foregoing, ADC shall have no obligations under this Section 12.4 if it has terminated this Agreement as a result of COUNTY's breach of its obligations to pay any Fees or other amounts due under this Agreement unless COUNTY pays ADC in advance the fees and expenses due ADC pursuant to this Section 12.4.

13. Limitation of Liability.

- 13.1 **Limitation of ADC Liability.** NOTWITHSTANDING ANYTHING IN THIS

AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, ADC SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE FEES PAID TO ADC BY COUNTY FOR THE USE OF THE SOFTWARE AND THE NETWORK DURING THE NINE MONTHS PRIOR TO THE CAUSE OF ACTION, (II) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (III) FOR LOST PROFITS; OR (IV) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. FOR PURPOSES OF SECTION 3.3, AND THIS SECTION 13.1, THE EVENTS SPECIFIED IN THE SECOND SENTENCE OF SECTION 4.2 AND IN SECTION 10.4 SHALL BE DEEMED, WITHOUT LIMITATION, TO BE MATTERS BEYOND ADC'S REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO COUNTY.

- 13.2 **Limitation of COUNTY Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY OR BREACHES OF SECTIONS 8.1 THROUGH 8.6, COUNTY SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE OF FEES PAID OR PAYABLE TO ADC BY COUNTY FOR THE NETWORK DURING THE NINE MONTHS PRIOR TO THE CAUSE OF ACTION, (II) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) FOR LOST PROFITS (EXCEPT FOR FEES PAYABLE BY COUNTY TO ADC UNDER THIS AGREEMENT). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO ADC.

14. **Confidentiality.** Each party to this Agreement acknowledges that it or its employees may be exposed to or acquire information in connection with this Agreement that is proprietary or confidential to the other party or third parties to whom either party has a duty of confidentiality. Except as set forth below, any and all information relating to the business of either party or its COUNTY's or customers and other information obtained by either party or its employees in the performance of this Agreement shall be deemed to be confidential and proprietary information

provided all such material is clearly labeled as "Confidential" or "Proprietary." Except as otherwise provided herein, each party agrees to hold the Confidential information of the other party in confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever and to advise each of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential. Notwithstanding the above: (A) nothing contained in this Section 14 or elsewhere in this Agreement shall restrict ADC from complying with industry reporting requirements; (B) the terms of this Agreement, technical data, implementation plans shall be considered Confidential Information regardless of whether such information is labeled as such; (C) neither party is prohibited from (i) under confidence, using or disclosing Confidential Information to third parties as required to perform its obligations under this Agreement, (ii) using or disclosing such Information externally in an aggregate or statistical composite form (provided that such Information is combined with other similar information and does not specifically identify the Information as specific to COUNTY), or (iii) in confidence, using or disclosing such Information to its auditors or attorneys, or to investors or potential investors or other financing sources and their advisors, or in connection with a merger or acquisition or proposed merger or acquisition; and (C) Confidential Information shall not include (i) information that is now or subsequently becomes publicly available without breach of this Agreement by the receiving party, (ii) information made available to either party from other sources without any obligation of confidentiality, (iii) information that is already in either party's possession not subject to an obligation of confidentiality, (iv) information that is independently developed by either party without reference to any confidential information, and (v) information that is required to be disclosed pursuant to any law or any rule or regulation of a governmental agency or any order of a court or governmental agency provided that the receiving party shall first notify the disclosing party of such disclosure requirement or order and uses reasonable efforts to obtain confidential treatment or a protective order. Upon termination of this Agreement, the receiving party will at its option return to the disclosing party or destroy all Confidential Information of the disclosing party and all documents or media containing any such Confidential Information and any and all copies or extracts thereof, except that the receiving party may retain one copy of all such Confidential Information solely for archival legal purposes.

15. **Publicity And Marketing.** Both parties agree to cooperate with each other so that each party may issue a press release concerning this Agreement, provided that each party must approve any press release prior to its release, which shall not be unreasonably withheld. COUNTY agrees that it may be designated as a "reference account" for ADC's web-based remote order entry and reporting technology solution to certain potential customers, upon terms to be mutually agreed by the parties hereto.

16. User Data.

16.1 **Ownership.** As between the parties, COUNTY shall own all user data regarding all users of the Network and any orders or reports ("User Data") transmitted via the Network. COUNTY shall bear sole responsibility for independently maintaining prudent back-ups (whether in printed or machine-readable form) of all reports and other information provided to ADC, including (without limitation) all User Data.

16.2 **Use Restrictions.** ADC shall not use for any purpose other than as expressly set forth herein or expressly permitted in writing by COUNTY, or disclose to any third party any User Data. Notwithstanding the foregoing, ADC shall be entitled to use aggregated Transaction data, and user sessions data for all users collectively of ADC services, so long as such data is not aggregated on customer by customer basis.

17. Account Managers.

(a) ADC will designate one person as the Account Manager for COUNTY under this Agreement. The Account Manager shall be the primary contact for all matters arising under this Agreement and shall be primarily responsible for the delivery of services and the daily management and decision-making responsibility.

(b) COUNTY will designate one senior level person as the primary contract for ADC under this Agreement. This person shall have authority to make daily decisions, shall be the primary contact for all matters arising under this Agreement, shall have signature authority, shall facilitate payments due from COUNTY, and shall facilitate work with and assistance by COUNTY and Authorized Users.

18. **General.** For all purposes of this Agreement, each party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. All notices under this Agreement shall be in writing, and

shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. Neither party shall have any right or ability to assign, transfer, or sublicense any obligations or benefit under this Agreement without the written consent of the other (and any such attempt shall be void), except that a party may assign and transfer this Agreement and its rights and obligations hereunder to any third party who succeeds to substantially all its business or assets. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. It is the intention of the parties that this Agreement be controlling over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both parties, and that waivers and amendments shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver. This Agreement is intended for the benefit only of the parties and no third-party beneficiaries to this Agreement shall be inferred. This Agreement supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. No changes, modifications, or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof. Any action or proceeding brought by either party to enforce its rights under this Agreement shall be brought in a court of competent jurisdiction located in the County of Los Angeles, State of California. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys fees. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

COUNTY

ADC

By:
Title:

By:
Title:

EXHIBIT "A"
Description of the Software

[to be supplied]

EXHIBIT "B"
Statement of Work

[to be supplied]

EXHIBIT "C"
Service Level Agreement

[to be supplied]

EXHIBIT "D"
Pricing

EXHIBIT "E"
Support Program
Terms and Conditions

G. I. Hours of Operation

Telephone hotline support is available to all customers during normal business hours are weekdays, 7:00 a.m - 6:00 p.m. Pacific time (excluding holidays). Support calls from clients not contracting for a Monthly Support Block, or Extended Coverage are handled in the order received.

II. Support Levels

1. Standard Support

- 1.1 Support commitment only during normal business hours.
- 1.2 Standard Support pricing outlined below.
- 1.3 Monthly Support Blocks can be purchased at a discount over the Standard Rate.
- 1.4 Standard Support customers opting for Monthly Support Blocks are given first priority.

2. Extended Coverage Support

- 2.1 Support outside of normal business hours.
- 2.2 On-call pager, dedicated support and other extended services available.
- 2.3 Tailored to meet the client's needs.
- 2.4 Contact us for service and pricing to meet your requirements.

H.

I. III. Monthly Support Blocks

Support is available as needed for an hourly fee. Customers may choose to purchase support hours in advance, at a discounted rate. Atlas is committed to provide the number of support hours specified in the contract block you purchase. A block of hours represents a commitment to provide support during a specified calendar month. (a "Monthly Support Block").

Monthly Support Blocks are a cost-effective means of ensuring that support is available when needed. We suggest choosing a Monthly Support Block that is

consistent with the anticipated level of Atlas support required. Overage hours are provided based on available personnel and staffing. Clients with monthly support block hours are given first priority.

Purchases of Monthly Support Blocks are automatically renewed each month. A customer may cancel this commitment, or change the number of hours in its Monthly Support Block at any time on thirty (30) days prior written notice. Notice of such cancellation or change must be received not later than the first day of the month to be effective for the succeeding month. A customer may not change the number of hours in its Block more than four (4) times in any twelve-month period.

IV. Standard Support Pricing - As of 1/1/2002

Support is charged at \$125.00/hour (the "Standard Support Rate") unless a Monthly Support Block is purchased.

# Hours	Cost for Block	Overage Rate
120	\$	\$
100	\$	\$
80	\$	\$
60	\$	\$
40	\$	\$
30	\$	\$
20	\$	\$
10	\$	\$

V. Billing

Timesheets are provided upon request with each month's invoice with hours exceeding the Monthly Support Block, and are charged at the specified Hourly Rate for Overage. This overage is payable with the Monthly Support Block fee for the succeeding month. Unused hours in a Monthly Support Block will not be credited to succeeding months. Invoices are payable upon receipt. Late payments shall be subject to interest at the rate of one and one-half percent (1 ½ %) per month until fully paid.

Procedures

I. Definitions

All capitalized terms shall have the meaning assigned to them in the Agreement by and between the parties to which this **Schedule 3.1** is appended.

II. Support Personnel

Support calls are first handled by a customer support specialist who is responsible for “triaging” issues as they are received. Each issue is logged at intake into Atlas’s Incident Tracking Log and assigned an incident number for the client’s future reference. Response, Defect Analysis, Interim and Final Resolution are documented using this log to ensure continuity throughout the process and to provide future reference for others encountering similar issues.

If the customer support specialist determines that the incident is not an engineering “Problem” (e.g. customer is unfamiliar with the operation of the software, the software documentation is incorrect or incomplete, or the incident is unrelated to the software, such as a hardware problem) then he/she assumes responsibility for the incident until Final Resolution. If it is characterized as a “Problem” properly handled by an engineer, it is referred to a support engineer.

III. Escalation Procedures for Support Issues.

The following table and accompanying text summarize Atlas Medical Software’s response commitment to all clients contracting for support coverage.

Table I: Support Escalation Procedures

Defect Category	Response	Defect Analysis	Interim Resolution	Final Resolution
Critical	Immediate if during help desk hours; †thirty (30) minutes if after help desk hours	Two (2) hours following the Response	Four (4) hours following the Response	Within two (2) calendar days following Interim Resolution
High	One (1) business day	Two (2) business days following the Response	Three (3) business days following the Response	Within ten (10) business days following Interim Resolution

Defect Category	Response	Defect Analysis	Interim Resolution	Final Resolution
Medium	Two (2) business days	Five (5) business days following the Response	Ten (10) business days following the Response	Next Release
Low	Three (3) business days	Ten (10) business days following the Response	Thirty (30) business days following the Response	Next Release

† Assumes CLIENT has contracted for extended support coverage

Critical Defects. With respect to Critical Defects, following receipt of notice thereof, Atlas shall provide: (a) an immediate Response if notice is received during regular telephone help desk hours, and a Response within thirty (30) minutes if notice is received after regular telephone help desk hours; (b) a Defect Analysis within two (2) hours of the Response; (c) an Interim Resolution within four (4) hours of the Response (which may include the provision of a temporary workaround); and (d) a Final Resolution within two (2) calendar days after implementation of the Interim Resolution. Atlas personnel shall continuously attempt to resolve such Critical Defect until an Interim Resolution is reached.

High Defects. With respect to High Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within one (1) business day; (b) a Defect Analysis within two (2) business days of the Response; (c) an Interim Resolution within three (3) business days of the Response (which may include the provision of a temporary workaround); and (d) a Final Resolution within ten (10) business days after implementation of the Interim Resolution.

Medium Defects. With respect to Medium Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within two (2) business days; (b) a Defect Analysis within five (5) business days of the Response; (c) an Interim Resolution within ten (10) business days of the Response; and (d) a Final Resolution in the next release of the Software.

Low Defects. With respect to Low Defects, following receipt of notice thereof, Atlas shall provide: (a) a Response within three (3) business days; (b) a Defect Analysis within ten (10) business days of the Response; (c) an Interim Resolution within thirty (30) business days of the Response; and (d) a Final Resolution in the next release of the Software.

EXHIBIT C

CONTRACTOR/EMPLOYEE ACKNOWLEDGMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT AGREEMENT

PROJECT NAME _____

CONTRACTOR/EMPLOYER NAME _____

CONTRACT NUMBER _____

GENERAL INFORMATION

Your employer referenced above has entered into the above-referenced Contract with the County of Los Angeles (hereafter sometimes "County") to provide certain services to the County. The County requires your signature on this Contractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand and agree that the above-referenced Contractor is my sole employer for purposes of the above-referenced County Contract. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced County Contract.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County by virtue of my performance of work under the above-referenced County Contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

CONFIDENTIALITY

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities receiving services from the County. In addition, you may also have access to confidential proprietary data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor, or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in the County's possession, especially data, information and materials concerning health, criminal and welfare recipient records and proprietary data, information and materials. If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by your employer for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to my immediate supervisor.

I agree to protect from loss and to keep confidential all health, criminal and welfare recipient records and all data, information and materials pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, vendor proprietary information and all other original materials produced, created or provided to or by me as related to the above-referenced County Contract. I agree to protect these confidential items against disclosure to other than my employer or County employees who have a

EXHIBIT C

**CONTRACTOR/EMPLOYEE
ACKNOWLEDGMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT
AGREEMENT**

PROJECT NAME _____

CONTRACTOR/EMPLOYER NAME _____

CONTRACT NUMBER _____

need to know the information. I agree that if proprietary data, information and materials of the County, the above-referenced Contractor, or other vendors doing business with the County is provided to me during this employment, I shall keep such data, information and materials confidential.

I agree to report to my immediate supervisor any and all violations of the above-referenced County Contract or this Agreement by myself and/or by any other person of which I become aware. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the above-referenced County Contract, or termination of my employment with my employer, whichever occurs first.

COPYRIGHT ASSIGNMENT

I agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, data and other information and/or tools of all types, developed or acquired by me in whole or in part pursuant to the above-referenced County Contract, and all works based thereon, incorporated therein, or derived therefrom, shall be the sole property of the County, including, without limitation, the Project Control Document and the specifications for the System (as such terms are defined in the above-referenced County Contract including its related Exhibits and Attachments), and all materials, plans, reports, acceptance test criteria, acceptance test plans, departmental procedures and processes, deliverables, data, and information, excluding the System Software (as such terms are defined in the above-referenced County Contract including its related Exhibits and Attachments). In this connection, I hereby assign and transfer to the County in perpetuity for all purposes all my right, title and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof.

Whenever requested by the County, I agree to promptly execute and deliver to the County all papers, instruments and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this Agreement, including, but not limited to, executing an assignment and transfer of copyright in the form substantially similar to Exhibit C-1, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Date: _____ Social Security Number: _____

Name: _____ Working Title: _____
(Contractor Employee's Signature)

Name: _____

EXHIBIT C

**CONTRACTOR/EMPLOYEE
ACKNOWLEDGMENT, CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT
AGREEMENT**

PROJECT NAME _____

CONTRACTOR/EMPLOYER NAME _____

CONTRACT NUMBER _____

(Print Contractor Employee's Name)

**no shame.
no blame.
no names.**

**now there's a way to
safely surrender your baby**



The Safely Surrendered Baby Law A Confidential Safe Haven For Newborns

In California, the Safely Surrendered Baby Law allows an individual to give up an unwanted infant with no fear of arrest or prosecution for abandonment as long as the baby has not been abused or neglected. The law does not require that names be given when the baby is surrendered. Parents are permitted to bring a baby within 3 days of birth to any hospital emergency room or other designated safe haven in California. The baby will be placed in a foster or pre-adoptive home.

In California, no one ever has to abandon a child again.

In Los Angeles County:

(877) BABY SAFE

(877) 222-9723

babysafela.org



State of California
Gray Davis, Governor
Health and Human Services Agency
Grantland Johnson, Secretary
Department of Social Services
Rita Saenz, Director



Los Angeles County Board of Supervisors
Gloria Molina, Supervisor, First District
Yvonne Brathwaite Burke, Supervisor, Second District
Zev Yaroslavsky, Supervisor, Third District
Don Knabe, Supervisor, Fourth District
Michael D. Antonovich, Supervisor, Fifth District

This initiative is also supported by First 5 LA and INFO LINE of Los Angeles

What is the Safely Surrendered Baby Law?

It's a new law. Under this law, a person may surrender their baby confidentially. As long as the baby has not been abused or neglected, the person may do so without fear of arrest or prosecution.

How does it work?

A distressed parent who is unable or unwilling to care for an infant can legally, confidentially and safely surrender their baby within 3 days of birth. All that is required is that the baby be brought to a hospital emergency room in California. As long as the child shows no signs of abuse or neglect, no name or other information is required. A bracelet will be placed on the baby for identification. A matching bracelet will be given to the parent. The bracelet will help connect the parent to the baby if the parent wants the baby back.

Can only a parent bring in the baby?

In most cases, a parent will bring in the baby. The law allows another person to bring in the baby if they have legal custody.

Does the parent have to call before bringing in the baby?

No. A parent can bring in a baby anytime, 24 hours a day, 7 days a week.

Does a parent have to tell anything to the people taking the baby?

No. Nothing is required. However, hospital personnel will give the parent a medical information questionnaire that is designed to gather family medical history. This could be very useful in caring for the child but it is up to the parent to complete it.

What happens to the baby?

The baby will be examined and given medical treatment, if needed. Then the baby will be placed in a foster or pre-adoptive home.

What happens to the parent?

Once the parent(s) has safely turned over the baby, they are free to go.

What if a parent wants the baby back?

The parent(s) may take the bracelet back to the hospital. Hospital personnel will provide information about the baby.

Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being hurt or killed because they were abandoned.

You may have heard tragic stories of babies left in dumpsters or public toilets. The persons who committed these acts may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had nowhere to turn for help, they abandoned their infants.

Abandoning a baby puts the child in extreme danger. It is also illegal. Too often, it results in the baby's death. Because of the Safely Surrendered Baby Law, this tragedy doesn't ever have to happen in California again.

The Eighteenth Safely Surrendered Baby in California

At 8:30 a.m. on Thursday, July 25, 2002, a healthy newborn baby was brought to St. Bernardine Medical Center in San Bernardino under the provisions of the California Safely Surrendered Baby Law.

This baby was the eighteenth child protected under California's Safely Surrendered Baby Law. As the law states, the baby's mother did not have to identify herself. When the baby was brought to the emergency room, he was examined by a pediatrician, who determined that the baby was healthy and doing fine. He was placed in a foster home for short-term care while the adoption process was started.

Every baby deserves a chance for a healthy life. If you or someone you know is considering giving up a child, learn about your options.

Certainly we would prefer that women seek help while they are pregnant, not after giving birth, to receive proper medical care and counseling. But at the same time, we want to assure parents who choose not to keep their baby that they will not go to jail if they deliver their babies to safe hands in a hospital emergency room.